SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
MAR 11 1969
JOHN F. DAVIS, CLERK

APPENDIX

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 705

JOSEPH Q. CIPRIANO,

Petitioner,

—v.—

CITY OF HOUMA, ET ALS,

Respondents.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

Franklin Printing Company, Inc. • 209 Magazine St. • New Orleans • 522-9654

DOCKETED NOVEMBER 1, 1968
JURISDICTION JANUARY 27, 1969

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CIVIL DOCKET
UNITED STATES DISTRICT COURT
THREE JUDGE COURT.
JUDGES WISDOM, COMISKEY AND RUBIN

Judges Wisdom, Comiskey and Rubin
Section C
Jury demand date:

D. C. Form No. 106A Rev.

TITLE OF CASE	ATTORNEYS
JOSEPH Q. CIPRIANO VERSUS CITY OF HOUMA, G. LESLIE BROUSSARD, MAYOR, CHRISTIAN L. OLIVIER, CHARLES DAVIDSON, PETER BOURGEOIS, JR. SAMUEL LUSCO AND WILBERT P. BONVILLIAN	For plaintiff: Kenneth T. Watkins WATKINS, WATKINS AND WALKER 415 Goode Street Houma, Louisiana 70361 (Phone: 872-3256) FOR INTERVENOR Jack P. F. Gremillion, Atty Gen'l P. O. Box 44005 Baton Rouge, La. and William V. Redmann, Exec. Counsel to the Governor For: Intervenor-Defendant, State of Louisiana For defendant: E. E. Huppenbauer, Jr., T.A. 707 National Bank of Commerce Bldg. New Orleans, La. 70112 (COX, BAGOT & HUPPENBAUER) AND Ted J. Borowski, City Attorney City of Houma 1626 Barrow St. Houma, La. 70361 As Amicus Curiae: (La. Security Dealers Association) Kenneth W. Ford, Esq. Suite 2313—225 Baronne St., New Orleans, La. 70112

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed	Clerk		12-18-67	Watkins, W.	15.00	15.00
J.S. 6 mailed	Marshal		12-21-67	C.D. #32		(Appeal)
Basis of Action:			9- 9-68	Watkins, W.	5.00	
To redress deprivation of equal rights, under Constitution, Injunctive Relief; and for 3-Judge Court	Docket fee		9-10-68	C.D. #15		5.00
Action arose at:	Witness fees Depositions					

Kenneth C. DeJean
Special Counsel to Atty. Gen'l
P. O. Box 44005
Baton Rouge, La.
R. Gordon Kean, Jr.
P. O. Box 1588
Baton Rouge, La.
FOR: La. Municipal Ass'n.

DOCKET SHEET

Date	Proceedings	Page #
12/18/67	Flg. Complaint. Issg. 7 summons. THREE JUDGE COURT REQUESTED.	1-7
1/ 9/68	Flg. ORDER by Chief Judge John R. Brown appointing three judge panel consisting of the Hon. John Minor Wisdom, U. S. Circuit Judge and the Hons. James R. Comiskey and Alvin B. Rubin. Ent. 1/18/68. Issg. notices.	8-14
2/ 8/68	Flg. ANSWER of City of Houma, G. Leslie Broussard, Mayor, Christian L. Oliver, Charles Davidson, Peter Bourgeois, Jr., Samuel Lusco and Wilbert P. Bonvillain, members of the Board of Aldermen of the City of Houma	26-28
2/ 9/68	Fig. TRIAL REQUEST by Defts.	29
2/16/68	Conference held on Friday, 2/16/68, to discuss setting of this case for trial, etc. Tenative trial dates were discussed, and it was agreed that counsel would be notified of the date fixed, etc. Ent. 2/20/68. Issg. notices.	30
2/26/68	ORDERED that the trial is assigned for 3/28/68, 2:30 P.M., in the Court of Appeals courtroom, Room 416, 400 Royal St., N.O., La. Ent. 3/1/68. Issg. notices.	31
3/21/68	Flg. stipulation of facts by all parties. (exhibits attached)	33-38
3/28/68	Flg. Motion to intervene as defendant by the State of Louisiana.	91-92

DOCKET SHEET

Date	Proceedings	Page #
3/28/68	Flg. Petition for permission to file brief as amicus curaie by La. Municipal Assoc.	93-95
3/28/68	CASE CALLED; Submitted. Counsel for plaintiff is given 10 days in which to file supplemental briefs and counsel for defendants are given five days thereafter in which to file reply briefs. (J. Wisdom, Rubin & Comiskey) Ent. 4/8/68.	96
4/19/68	Flg. Petition for permission to file brief as amicus curiae by the Loiusiana Security Dealers Association, Inc., for reasons herein etc., and ORDER (ABR 4/22/68) permitting the filing of briefs as amicus curiate etc. Ent. 4/24/68. issg notices.	99-101
7/15/68	Flg. OPINION by the Court; Judgment will be entered for the deft. ABR, JAC, and Judge Wisdom dissenting. Ent. 7/15/68. Issg. notices.	102-115
7/23/68	Flg. JUDGMENT; ORDERED that there be judgment in favor of defts., and against pltf., dismissing suit with costs. JMW, ABR, JAC. Ent. 7/25/68. Issg. notices.	116
9/ 6/68	Flg. notice of appeal to the Supreme court of the U.S. by Pltf. CLOSED CASE	117
9/ 6/68	Flg. Proof of service—Affidavit, by plaintiff's counsel.	118-120

DOCKET SHEET

Date	Proceedings	Page #
9/ 6/68	Flg. plaintiff's request to clerk to certify and transmit entire record to the U. S. Supreme Court.	121
10/28/68	Flg. Motion by Plaintiff-Appellant and ORDER (JMW), that the documents and papers in this action etc., be forwarded to the Clerk of The Supreme Court of the U. S. etc., Ent. 10/28/68. issg. notice.	122-123
10/30/68	Flg. Reporter's transcript of hearing on 3/29/68.	124-169

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

CIVIL ACTION

No. 67-1853

SECTION C

JOSEPH Q. CIPRIANO,

Petitioner,

versus

CITY OF HOUMA, ET ALS,

Respondents.

67-1853
Section C

[1]

Law Offices
WATKINS, WATKINS & WALKER
415 Goode Street

Post Office Box 1047
Telephone 872-3256
Houma, Louisiana 70360

Kenneth Watkins
J. Louis Watkins, Jr.
James C. Walker, Jr.
Van F. Ellender

December 18, 1967

Section C
67-1853

Honorable A. Dallam O'Brien
Clerk, United States District Court
Eastern District of Louisiana
400 Royal Street
New Orleans, Louisiana
Re: Cipriano vs. City of Houma

Dear Mr. O'Brien:

Pursuant to Rule 14 of the United States District Court for the Eastern District of Louisiana, notice is hereby given to you in writing that the above-captioned action is throught to require a three judge court for its disposition, such jurisdiction being requested and invoked under the provisions of 28 U.S. Code 2284, 1343, 2201, 2202, and 42 U.S. Code 1981-85, and the Fourteenth Amendment to the United States Constitution, attacking the constitutionality of the provisions of Article XIV, Section 14 (a) of the Louisiana Constitution, and Louisiana Revised Statutes, Title 39, Section 508 and Title 33, Section 4258 on the basis that such provisions deprive plaintiffs of their right to vote by requiring that they own and pay taxes on property.

All pleadings are hereby filed in quadruplicate in accordance with the provisions of Rule 14.

Respectfully yours,

WATKINS, WATKINS & WALKER
/s/ K. WATKINS
KENNETH WATKINS

KW/d
Encls.

Filed
U. S. District Court
Eastern District of La.
Dec 18, 3:12 PM '67
A. Dallam O'Brien, Jr.
Clerk
B

J. S. 5

[2] UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

CIVIL ACTION

No. 67-1853

SECTION C

JOSEPH Q. CIPRIANO

VS.

CITY OF HOUMA,
G. LESLIE BROUSSARD, Mayor,
CHRISTIAN L. OLIVIER, CHARLES DAVIDSON,
PETER BOURGEOIS, JR., SAMUEL LUSCO and
WILBERT P. BONVILLAIN

PETITION

NOW COMES Joseph Q. Cipriano, plaintiff herein, and states as follows:

I.

Plaintiff is a citizen of the United States and resides in the City of Houma, Parish of Terrebonne, State of Louisiana. The defendant City of Houma is a municipality organized under the laws of Louisiana and G. Leslie Brous-

sard, Christian L. Olivier, Charles Davidson, Peter Bourgeois, Jr., Samuel Lusco, and Wilbert P. Bonvillain are the Mayor and Board of Aldermen, respectively, of the defendant City, are all residents of the Parish of Terrebonne, State of Louisiana, and constitute the governing authority of the said City of Houma.

The jurisdiction of this Court is invoked pursuant to the Fourteenth Amendment to the United States Constitution, the provisions of Title 28, U.S. Code, § 1343, 2201 and 2202, this being a suit in equity authorized by Title 42 U.S. Code § 1983, brought to redress the deprivation, *under color of State law, statute*, ordinance, regulation, custom or usage, of rights, privileges, and immunities secured by the Constitution and Laws of the United States providing for equal rights of citizens. The rights here sought to be redressed are rights guaranteed by the due process and equal protection clauses of the Fourteenth Amendment of the Constitution of the United States and by Title 42 U.S. Code § 1981-1985, as hereinafter more fully appears.

[3] This action is brought under the provisions of Rule 65 of the Federal Rules of Civil Procedure seeking an injunction. This is a class action under Rule 23 of the Federal Rules of Civil Procedure; plaintiff is a member of a class so numerous that joinder of all members is impracticable, there are questions of law and fact common to the class, the claims of the representative parties are typical of the claims of the class, and the representative parties will fairly and adequately protect the interests of the class.

II.

On September 12, 1967, the defendant, City of Houma, adopted, pursuant to Article XIV, Section 14 (a) of the Louisiana Constitution, and Louisiana Revised Statutes,

Title 39, Section 508 and Title 33, Section 4258, a resolution ordering and calling a special election to be held in the City of Houma to authorize the issuance of utility revenue bonds by said City. The resolution calling said election restricted said election to resident property taxpayers of said City. Thereafter, at the election held on October 24, 1967, neither the plaintiff nor any other similarly situated and otherwise qualified, non-property taxpayer voters were permitted by the defendants to vote in said election.

III.

Plaintiff and others in the class described hereinabove were deprived, solely because of their failure to own property subject to taxation and to pay property taxes thereon, of the elective franchise in the abovementioned election by the City of Houma, and they were thereby discriminated against in favor of persons who owned sufficient property to be subject to, and pay taxes thereon.

IV.

The provisions of the Constitution and Statutes of the State of Louisiana specified hereinabove, which had the effect of requiring ownership of property subject to, and payment of property taxes as a condition of voting in the abovementioned election, discriminate against plaintiff and others similarly situated, depriving them of their rights, privileges and immunities under the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States, and are therefore unconstitutional and void.

[4] V.

Defendants, by engaging in the enforcement, execution and administration of the provisions of the Constitu-

tion and Statutes of Louisiana specified hereinabove, have deprived and will continue to deprive, unless restrained, plaintiff and others similarly situated of their rights under the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States.

VI.

The damage and injury done to plaintiff by reason of their being deprived of the foregoing rights is continuing and irreparable and there is no adequate remedy at law.

WHEREFORE, plaintiff prays that this Court:

A. Convene a statutory court of three judges pursuant to Title 28, United States Code, § 2284, for the purpose of hearing and determining this cause.

B. Adjudge and declare to be in violation of the Constitution of the United States, and therefore void, all provisions of the Constitution and statutes of Louisiana which have the effect of requiring ownership of property and payment of taxes thereon as a condition of voting in elections in that State, and adjudge and declare the election held by the City of Houma on October 24, 1967 to be null and void and without effect.

C. Issue a preliminary and permanent injunction—

(1) Restraining and preventing defendants, their agents, servants, and employees and all other persons in active concert with them who receive actual notice of the order of the Court by personal service or otherwise from enforcing, executing, administering, or in any manner giving effect to, the provisions of the Constitution and statutes of Louisiana which have the effect of requiring ownership of property and payment of taxes thereon as a condition of voting in elections in that State.

[5] (2) Restraining and enjoining defendants, their agents, servants and employees and all other persons in active concert with them from issuing bonds pursuant to said election, held on October 24, 1967.

(3) Directing defendants (a) to notify those governmental officials and governmental boards and bodies of the City of Houma, the activities of which said defendants are authorized by law to supervise, direct or coordinate, that the provisions of the Constitution and statutes of Louisiana which have the effect of requiring ownership of property and payment of taxes thereon as a condition of voting in elections in that State, are unconstitutional and void, and (b) to instruct said governmental officials and governmental boards and bodies to cease enforcing, executing, administering or in any manner giving effect to, the provisions of the Constitution and statutes of Louisiana which have the effect of requiring ownership of property and payment of taxes thereon as a condition of voting in elections in that State.

D. Grant plaintiffs such other and further relief as may be just and equitable in the premises.

WATKINS, WATKINS & WALKER
Kenneth T. Watkins

/s/ KENNETH T. WATKINS
415 Goode Street
Houma, Louisiana 70361
Telephone 872-3256
Attorneys for Plaintiff

Plaintiff's address:
P. O. Box 10-125
Houma, Louisiana

[6] VERIFICATION

UNITED STATES OF AMERICA
STATE OF LOUISIANA
PARISH OF TERREBONNE

I, the undersigned, Joseph Q. Cipriano, being first duly sworn on oath depose and say: That I am a resident and citizen of the City of Houma, in the State of Louisiana; that I am the plaintiff named and described in the foregoing complaint; that I know the contents thereof and as to all the matters of fact therein stated and same is true, and as to all matters therein stated on information and belief, I believe them to be true.

/s/ JOSEPH Q. CIPRIANO
JOSEPH Q. CIPRIANO

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 18th DAY
OF DECEMBER, 1967.

/s/ KENNETH T. WATKINS
NOTARY PUBLIC

[7] PLEASE SERVE
CITY OF HOUMA
through its Mayor,

G. Lesile Broussard
City Hall
Houma, Louisiana

G. LESLIE BROUSSARD, Mayor
908 High Street
or City Hall
Houma, Louisiana

CHRISTIAN L. OLIVIER
1305 Point Street
or 605 East Main Street
Houma, Louisiana

CHARLES DAVIDSON
401 Dunn Street
or 1406 Tunnel Boulevard
Houma, Louisiana

PETER BOURGEOIS, JR.
501 Buena Vista Boulevard
Houma, Louisiana

SAMUEL LUSCO
301 Morgan Street
Houma, Louisiana

WILBERT P. BONVILLAIN
East Park Avenue
Houma, Louisiana

Filed
U. S. District Court
Eastern District of La.
Jan 9, 11:08 AM '68
A. Dallam O'Brien, Jr.
Clerk
B

Jan 18 1968

[8]

IN THE
UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

CIVIL ACTION
No. 67-1853

JOSEPH Q. CIPRIANO
VS.
CITY OF HOUMA, ET AL

The Honorable Alvin B. Rubin, United States District Judge for the Eastern District of Louisiana, to whom an

application for injunction and other relief has been presented in the above styled and numbered cause, having notified me that the action is one required by act of Congress to be heard and determined by a District Court of three Judges, I, John R. Brown, Chief Judge of the Fifth Circuit, hereby designate the Honorable John Minor Wisdom, United States Circuit Judge, and the Honorable James A. Comiskey, United States District Judge for the Eastern District of Louisiana, to serve with Judge Rubin as members of, and with him to constitute the said Court to hear and determine the action.

WITNESS my hand this 4th day of January, 1968.

/s/ JOHN R. BROWN
JOHN R. BROWN
Chief Judge
Fifth Circuit

Ken T. Watkins
Ted J. Borowski

[9 thru 25] * * * * *

Filed
U. S. District Court
Eastern District of La.
Feb 8, 1:48 PM '68
A. Dallam O'Brien, Jr.
Clerk
B

[26] (TITLE OMITTED IN PRINTING)

ANSWER

NOW INTO COURT, through undersigned counsel, come the City of Houma, G. Leslie Broussard, Mayor,

Christian L. Olivier, Charles Davidson, Peter Bourgeois, Jr., Samuel Lusco and Wilbert P. Bonvillain, members of the Board of Aldermen of the City of Houma, made defendants herein, and for answer to plaintiff's complaint say:

FIRST DEFENSE

The complaint filed herein fails to state a claim against the defendants upon which relief can be granted.

SECOND DEFENSE

Defendants deny paragraphs I, II, III, IV, V and VI of plaintiff's complaint, except such allegations therein set forth as may be hereinafter admitted.

Defendants admit plaintiff is a citizen of the United States and resides in the City of Houma, Parish of Terrebonne, State of Louisiana.

Defendants further admit that the City of Houma is a municipality organized under the laws of the State of Louisiana and G. Leslie Broussard, Christian L. Olivier, Charles Davidson, Peter Bourgeois, Jr., Samuel Lusco and Wilbert P. Bonvillain are the Mayor and Board of Aldermen, respectively, of the defendant City, are all residents of the Parish of Terrebonne, State of Louisiana, and constitute the governing authority of the City of Houma.

[27] Defendants further admit that on September 12, 1967, the Mayor and Board of Aldermen of the City of Houma adopted a resolution ordering and calling a special election to be held in the City of Houma, State of Louisiana, under the authority conferred by Part II, Chapter 4, Title 39, and Sub-Part C, Part I, Chapter 10, Title 33 of the Louisiana Revised Statutes of 1950, and other constitutional and statutory authority supplemental thereto, that

an election was held pursuant to said resolution on October 24, 1967, that 1828 voters representing an assessed valuation of $2,736,258.00 voted in favor of said proposition and 896 voters representing an assessed valuation of $1,108,268.00 voted against said proposition, and that said proposition was carried by a majority of 932 votes in number, representing an assessed valuation of $1,627,990.00.

THIRD DEFENSE

Defendants aver that injunction is an improper remedy (1) to restrain and enjoin defendants, their agents, servants and employees from issuing bonds pursuant to the authorization of the election held on October 24, 1967, and (2) to enjoin the enforcement and execution of the election statutes of the State of Louisiana insofar as they apply to said election, as plaintiff's complaint was filed herein fifty-five days after the date of said election and an adequate remedy at law is provided and exists in state courts under Louisiana law for plaintiff to contest the validity of said election and the issuance of said bonds; that injunction proceedings can only apply prospectively, i.e., to elections to be called by defendants hereafter.

WHEREFORE, defendants pray that plaintiff's demands be dismissed at plaintiff's costs, and for all such orders, decrees and judgments to which your defendants may be entitled in the premises, and for all general and equitable relief.

/s/ TED J. BOROWSKI
TED J. BOROWSKI,
City Attorney
City of Houma
Attorney for Defendant
1626 Barrow Street
Houma, Louisiana 70361

/s/ E. E. HUPPENBAUER, JR.
E. E. HUPPENBAUER, JR.
Attorney for Defendant
707 National Bank of
Commerce Bldg.
New Orleans, Louisiana 70112

OF COUNSEL:
COX, BAGOT & HUPPENBAUER
New Orleans, Louisiana

[28] (CERTIFICATE OMITTED IN PRINTING)

Feb 9 1968
U. S. District Court
Eastern District of La.
Filed Feb 9 1968
A. Dallam O'Brien, Jr.
Clerk

[29] COX, BAGOT & HUPPENBAUER
Attorneys and Counsellors at Law
707 National Bank of Commerce Building
New Orleans, Louisiana 70112

John W. Cox
Michael H. Bagot
Eugene E. Huppenbauer, Jr.

Gene Wallace
Gunther R. Michaelis
Jerry R. Osborne

Telephone 524-3212

February 8, 1968

Hon. A. Dallam O'Brien, Jr., Clerk
United States District Court
400 Royal Street
New Orleans, Louisiana

Re: Joseph Q. Cipriano vs.
City of Houma, et al
Civil Action No. 67-1853
Section "C"

Dear Mr. O'Brien:

On behalf of the City of Houma and the other named defendants in the above captioned proceedings, we have this day filed an answer in said civil action and as a result thereof, issue is now joined.

This is an injunctive proceeding brought against the City of Houma and its officials to enjoin certain action on behalf of said defendants as well as to declare null and void certain statutory procedures under the Louisiana revenue bond voting statutes. Accordingly, this is a three judge court case and a panel comprising Judges Wisdom, Rubin and Comiskey have been appointed to hear this proceeding.

Because of the injunctive relief prayed for as well as the other matters pertaining to this litigation, we presume that this action will be given preference on the trial calendar. Accordingly, it is requested that this matter be placed on the trial calendar at an early date and that a pre-trial conference be scheduled by the presiding judge.

Yours very truly,

COX, BAGOT & HUPPENBAUER
By: /s/ E. E. HUPPENBAUER, JR.

EEH:mb
cc: Mr. Ted J. Borowski
Mr. Kenneth T. Watkins
Mr. Kenneth C. DeJean

[30] Minute Entry
February 16, 1968
Rubin, J.

CIVIL ACTION

No. 67-1853

SECTION "C"

JOSEPH Q. CIPRIANO

versus

CITY OF HOUMA,
G. LESLIE BROUSSARD, Mayor,
CHRISTIAN L. OLIVIER, CHARLES DAVIDSON,
PETER BOURGEOIS, JR., SAMUEL LUSCO and
WILBERT P. BONVILLAIN

A conference was held in this matter on Friday, February 16, 1968, at 10:00 A.M. to discuss the setting of this case for trial, and matters relating thereto.

Present:

Kenneth Watkins, Esq., representing the plaintiff.

Ted J. Borowski, Esq., Eugene Huppenbauer, Jr., Esq., and Philip J. McMahon, Esq., representing the defendants.

Counsel for both parties agreed that the case could be presented on a stipulation of fact and such a stipulation would be filed at least fourteen (14) days prior to the date of trial. Further, counsel agreed that the plaintiff's brief would be filed at least fourteen (14) days prior to the date fixed for trial, and the defendants' brief would

be filed at least seven (7) days prior to the date fixed for trial. Each party will have leave to file further reply memoranda up to the date of the actual trial.

Tenative trial dates were discussed, and it was agreed that counsel would be notified of the date fixed for trial as soon as all of the members of the three-judge Court could be consulted to determine their availability on the dates on which counsel will be available.

Kenneth Watkins, Esq.
Ted J. Borowski, Esq.
Eugene Huppenbauer, Esq.
Philip J. McMahon, Esq.

[31] Minute Entry
February 26, 1968
Rubin, J.

Feb 20 1968

[31] (TITLE OMITTED IN PRINTING)

The trial in this matter is assigned for Thursday, March 28, 1968, at 2:30 P.M. The trial will be held in the Court of Appeals courtroom, Room 416, 400 Royal Street, New Orleans, Louisiana.

Mar 1 1968

3/1/68 ---

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[32] * * * * * *

U. S. District Court
Eastern District of La.
Filed Mar 21 1968
A. Dallam O'Brien, Jr.
Clerk
B

[33] UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

CIVIL ACTION

No. 67-1853

SECTION "C"

JOSEPH Q. CIPRIANO

VERSUS

CITY OF HOUMA,
G. LESLIE BROUSSARD, Mayor,
CHRISTIAN L. OLIVIER, CHARLES DAVIDSON,
PETER BOURGEOIS, JR., SAMUEL LUSCO and
WILBERT P. BONVILLAIN

STIPULATION OF FACTS

Now comes Joseph Q. Cipriano, Plaintiff, and the City of Houma, G. Leslie Broussard, Mayor, Christian L. Olivier, Charles Davidson, Peter Bourgeois, Jr., Samuel Lusco and Wilbert P. Bonvillain, Defendants, through undersigned counsel, who stipulate and agree as follows:

1.

Joseph Q. Cipriano is a citizen of the United States, resides in the City of Houma, Parish of Terrebonne, State

of Louisiana, in which city he is a duly registered and qualified voter, and in which city he does not own real property or pay municipal ad valorem taxes on any such property.

2.

The City of Houma is a municipality organized under the laws of the State of Louisiana. G. Leslie Broussard, Christian L. Olivier, Charles Davidson, Peter Bourgeois, [34] Jr., Samuel Lusco and Wilbert P. Bonvillain are the Mayor and Board of Aldermen, respectively, of said City, are all residents of the City of Houma, Parish of Terrebonne, State of Louisiana, and constitute the governing authority of the City of Houma.

3.

On September 12, 1967, the Mayor and Board of Aldermen of the City of Houma adopted a resolution ordering and calling a special election to be held in the City of Houma, State of Louisiana, under the authority conferred by Part II, Chapter 4, Title 39 and Sub-Part C, Part I, Chapter 10, Title 33 of the Louisiana Revised Statutes of 1950, and Article XIV, Section 14 (m) of the Louisiana Constitution for the year 1921, as amended, copies of which are annexed hereto and identified as Exhibit "A", "B" & "C", to authorize the issuance of revenue bonds by said City, a copy of which resolution is annexed hereto and made part hereof and identified as Exhibit "D".

4.

On October 24, 1967, an election was held in the City of Houma pursuant to the resolution adopted on September 12, 1967; that said election was held pursuant to the Louisiana constitutional and statutory authorities set forth in Paragraph 3 hereinabove; that on October 25, 1967, the

Mayor and Board of Aldermen of the City of Houma adopted appropriate proceedings convassing the returns and declaring the result of said special election, a copy of [35] which proceedings is annexed hereto and made part hereof and identified as Exhibit "E"; and that at said election, 1,828 voters representing an assessed valuation of $2,736,258.00 voted in favor of the proposition submitted and 896 voters representing an assessed valuation of $1,-108,268.00 voted against said proposition, and that said proposition was carried by a majority of 932 votes in number, representing an assessed valuation of $1,627,990.00.

5.

Plaintiff, Joseph Q. Cipriano, is a member of a class of 6,926 duly qualified and registered non-property taxpaying voters in the City of Houma, Louisiana, all of whom are similarly situated and entitled to bring a class action under Rule 23 of the Federal Rules of Civil Procedure.

6.

The bonds authorized at the election held in the City on October 24, 1967 are to be issued by the City of Houma in accordance with and subject to the provisions of Sub-Part C, Part I, Chapter 10, Title 33 of the Louisiana Revised Statutes of 1950.

7.

During the years 1965, 1966 and 1967 the total ad valorem taxes levied by the City of Houma on immovable property located in said City was at the rate of 8.4 mills. The average tax rate (excluding municipal taxes) levied [36] against immovable property situated in the Parish of Terrebonne during the year 1967 was 60.8 mills. During the year 1966 the average tax rate (excluding municipal

taxes) in said Parish was 62.7 mills and during the year 1965 the average tax rate (excluding municipal taxes) was 64.8 mills.

8.

The total number of residents in the City of Houma in the year 1967 was approximately 35,000. The total number of registered voters in the City of Houma on October 24, 1967 was 11,606. The total number of property taxpaying voters in the City of Houma on October 24, 1967 was 4,680 and their total assessed value of property was $5,988,627.00. The total number of non-property taxpaying registered voters in the City of Houma on October 24, 1967 was 6,926. The City of Houma electric light and power plant system served approximately 6,773 customers in the City of Houma as of December 31, 1967.
March 20, 1968.

/s/ KENNETH WATKINS
KENNETH WATKINS
Attorney for Plaintiff
Joseph Q. Cipriano

/s/ TED J. BOROWSKI
TED J. BOROWSKI
City Attorney
City of Houma
Attorney for Defendants

/s/ E. E. HUPPENBAUER, JR.
E. E. HUPPENBAUER, JR.
Attorneys for Defendants

EXHIBIT "A"

PUBLIC FINANCE

BONDED INDEBTEDNESS

Chapter 4

PART II. ELECTIONS

[37]

§ 501. Elections

Except as otherwise provided in special cases, no subdivision may incur any debt, issue any bonds, levy any special tax, or assume any indebtedness unless it has been authorized by vote of a majority in number and amount of the property taxpayers qualified to vote under the constitution and laws of this state who vote at an election hereunder. The governing authority of any subdivision may call a special election for any of these purposes at any time; and it shall call an election for any of these purposes when requested so to do by the petition in writing of one-fourth of the property taxpayers eligible to vote at the election.

[38] * * * * *

§ 502. Resolution calling election.

The election shall be ordered by resolution which shall state the purpose for which it is called.

If the proposition is to incur debt and issue negotiable bonds under Part III of this Chapter,[1] the purpose for which the debt is to be incurred, the amount of the debt, the number of years for which the bonds are to run, and the maximum rate of interest to be paid shall be stated.

If the proposition is to levy a special tax under Part

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[1] R.S. 39:551-39:670.

IV of this Chapter,[2] the rate, object, and purpose for which the tax is to be levied, and the number of years it is to run must be stated.

[39] * * * * *

§ 503. Notice of election

Notice of the election shall be given embracing substantially all matters required to be set forth in the resolution ordering the election, and shall set forth further that the authorities ordering the election will, in open session, at an hour and place named, proceed to open the ballot boxes, canvass the returns and declare the result. The notice shall be published for thirty days in a newspaper published in the subdivision; or if there is no newspaper published therein, in a newspaper published in the parish; or if there is no newspaper published in the parish, in a newspaper published in an adjoining parish, and by posting in three public places in the subdivision ordering the election. Four publications in a newspaper once a week, shall constitute a publication for thirty days; provided thirty days intervene between the date of the first publication and the date of the election.

[40] * * * * *

§ 504. Polling places; ballots

The governing authority ordering the election, shall designate the polling places; provide the ballot boxes; ballots; valuations of property and compiled statement of the voters in number and amount, and fix the compensation of the election officers. It shall appoint for each polling place, three commissioners and one clerk of election, all of whom shall be registered voters.

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[2] R.S. 39:701-39:706.

[41] * * * * * *

§ 505. Election officers; substitutes

If any commissioner or clerk of election is unable, or if he fails or neglects to attend or serve at the polling place designated, at the hour fixed for opening, or within one hour thereafter, the commissioners present shall appoint, or in the absence of all commissioners the voters present shall elect the necessary number of commissioners and clerks, who shall have the same powers, compensation and duties, as other commissioners and clerks and shall serve in the place and stead of the absentee or delinquent appointees.

* * * * *

§ 506. Election officers; oaths

Commissioners and clerks of elections, before opening the polls, shall be sworn to perform all the duties incumbent on them as such, the oath to be taken before any officer authorized to administer oaths, or by the clerk, and each commissioner before any other commissioner. The commis-
[42] sioners of election may administer any oath and receive any affidavit provided for in this Chapter.

* * * * *

§ 507. Penalty for violations

The commissioners and clerks of elections held under the provisions of this Chapter shall have the same powers and duties in conducting the elections and in preserving order at the polls as are conferred and imposed upon similar officers under the general election laws of this state.

[43] Whatever is declared in the general election laws to be a felony, other crime or misdemeanor, shall be the same for any election held under the provisions of this Chapter and shall be punished in the same manner.

Any wilful failure or neglect to comply with the requirements of this Chapter or any wilful violation by any officer, agent or employee of any subdivision, availing itself of the provisions of this Chapter, shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars or by imprisonment not exceeding one year, with or without hard labor, or by both fine and imprisonment.

* * * * *

§ 508. Qualifications of voters

Only property taxpayers qualified as electors under the constitution and laws of this state are entitled to vote in any election held under the provisions of this Part. The qualifications of taxpayers as voters are those of age, residence, and registration as voters, without regard to sex. There shall be no voting by proxy.

With reference to Part IV of this Chapter[1] if the limits and boundaries of any municipal corporation has been extended and the assessment roll that is to include the property in the extended limits has not already been made for the municipal corporation, those who have become property taxpayers by the extension of the limits and who are otherwise qualified to vote shall be permitted to vote in the election and the assessed valuation of their property shall be ascertained by reference to the last assessment roll of the parish.

[44] * * * * *

§ 509. Use of tax receipts

A. In all elections held under the provisions of this Part and in all other elections whatsoever held under any other laws of this state where the only question submitted

[1] 39:701-39:706.

is the incurring of debt and issuing of bonds or other evidences of debt and/or the question of levying special taxes, the voter shall use his tax receipt as obtained from the tax collector's office in determining the amount of assessment that shall be voted.

B. The registrar of voters shall furnish to the election commissioners appointed to hold such election the precinct binders showing those eligible to vote in said election. A taxpayer entitled to vote in said election shall present to the commissioners of election his tax receipt with the valuation of such taxpayer's property as shown by the assessment roll last made and filed prior to such election: provided, however, that when it is impossible for any taxpayer to present his tax receipt to show the valuation of his property, he shall be permitted to vote by the use of the copy of the tax receipt, which the commissioners shall find in the precinct binders. In case of loss of the original tax receipt and copy thereof, the commissioners of election may receive affidavits of such taxpayer's right to vote and of the proper assessed valuation of his property, which affidavits shall be attached to such taxpayer's ballot.

C. The tax collector in each of the sixty-four parishes shall make tax receipts for each taxpayer at the time the taxes are paid. Such tax receipts shall be made in a minimum of an original and three copies. The original shall go to the taxpayer and one copy to the registrar of voters, which shall be placed in the proper precinct binder and forwarded to the polls on election day. The additional copies shall be for the use of the tax collector.

D. Notwithstanding any provision of any law to the contrary, the provisions of this Section, with regard to the use of tax receipts shall be applicable at each election in this state in which there is submitted to the qualified prop-

erty taxpayer of any area of the state the question of incurring debt and issuing bonds or other evidences of debt therefor or the question of levying any tax. As amended Acts 1964, No. 399, § 2; Acts 1966, No. 500, §§ 2, 3.

[45] * * * * *

§ 510. Challenging votes

If the vote of any taxpayer is challenged, the commissioners of election shall permit him to vote and shall receive in writing the grounds of challenge signed by the challenger, together with the challenged taxpayer's statement of his asserted right to vote and the challenge and statement shall be attached to the ballot.

[46] * * * * *

§ 511. Form of ballot

(Signature of Voter)

If more than one proposition is submitted at the same special election, each proposition shall be so submitted as to enable the voter to vote thereon separately. The ballots to be used at special elections shall be in substantially the following form:

A. FOR THE INCURRING OF BONDED INDEBTEDNESS

Shall .....

(Name of Subdivision)

incur debt and issue bonds to the amount of.....

.....YES

Dollars,

to run .....years,

from date thereof, with interest, at the maximum rate

of ..... per cent per annum for the purpose of.....

..... NO

Taxable valuation $.....

.....

(Signature of Voter)

Notice to Voters: To vote in favor of the proposition submitted on this ballot, place a cross (X) mark in the square after the word "YES"; to vote against it, place a similar mark after the word "NO".

B. FOR THE LEVYING OF A TAX

Proposition to levy a.....
(Rate)

mill
tax on all the property subject to State taxation

in.....YES
(Subdivision)

for the period of.....
(Term)

for the purpose of.....

..... NO
(Here state the purpose of the tax)

Taxable valuation $.....

.....
(Signature of Voter)

Notice to Voters: To vote in favor of the proposition submitted upon this ballot place a cross (X) mark in the square after the word "Yes"; to vote against it place a similar mark after the word "No".

[47] * * * * *

§ 512. Voting

Each voter's name shall be written on his ballot. The commissioners of election shall receive the ballot of each voter, check his name on the list of voters furnished by the registrar, enter and number his name on the list of taxpayers voting, and immediately deposit his ballot in the ballot box, reserving to each voter the right to so fold his ballot that it shall not be known at the time of voting whether he voted for or against the proposition or propositions submitted. If the election is being held in a parish where the permanent registration laws are in force, the procedure in connection with the precinct registers shall be the same as that provided for in Part X of Chapter 1 of Title 18 of the Louisiana Revised Statutes of 1950.[1] As amended Acts 1964, No. 399, § 2.

* * * * *

§ 513. Opening and closing polls

1. In general

R.S. 18:1181, requiring polls to be open between 6:00 a.m. and 9:00 p.m. does not apply to special elections such as one called to approve a municipal bond issue. Jones v. City of Lake Charles, 1955, 227 La. 794, 80 So.2d 411.

The opening of polls earlier, and closing later than fixed in this section would not vitiate special tax election, unless voters were deprived of votes sufficient in number

[1] R.S. 18:231 et seq.

and amount to change the result of the election; however, strict interpretation suggests that in tax elections the polls close not later than 6:00 P.M. Op.Atty.Gen. 1960-62, p. 128.

2. Contest

Petition, which alleged existence of omissions and errors in list of voters furnished by registrar of voters to commissioners of election, failure of commissioners to be sworn, failure to close polls at hour fixed for closing, abscence of voting booths, and preparation and signing of ballots for voters by persons other than such voters, was not sufficient to show that the irregularites complained of were so gross as to have caused an injustice which would warrant declaration by the Supreme Court that the election was void. Duncan v. Vernon Parish School Bd., 1955, 226 La. 379, 76 So.2d 403.

§ 514. Counting ballots; precinct registers

A. Immediately after the closing of the polls, the commissioner shall, in the presence of the bystanders, open the ballot boxes; count the ballots found there; check the same with the list of voters; proceed to count the votes in number and amount; keep tally sheets in duplicate showing the votes in favor of and against the proposition or propositions submitted, and showing the valuation of property in favor of and against same; and make compiled statements in duplicate of the vote in number and amount, both in favor of and against each proposition or propositions.

B. After swearing to the correctness of the numbered list of voters, the duplicate tally sheets and duplicate compiled statements, the commissioner shall deposit the ballots, the registrar's list of voters, the numbered list of taxpayers voting, one duplicate tally sheet, and one duplicate compiled statement, in the ballot box immediately seal the

[48] ballot box and, within forty-eight hours after the closing of the polls, deliver the sealed ballot box with its contents to the authorities ordering the election. Within the same period they shall deliver the duplicate tally sheet and the duplicate compiled statement to the clerk of the district court of the parish in which the election was held who shall file them in his office. If the election is being held in a parish where the permanent registration laws are in force, the procedure in connection with the precinct registers shall be the same as that provided for in Part X of Chapter 1 of Title 18 of the Louisiana Revised Statutes of 1950.[1]

C. If the election commissioners on counting the ballots find that they do not correspond with the list of voters, they shall, before examining and counting the ballots, examine them for the purpose of finding the discrepancy and if it should be found that any ballots have been duplicated they shall be destroyed or, if it be found that the name of a voter has been omitted from the list of persons voting, it shall be added to the list. As amended Acts 1964, No. 399, § 2.

[49] * * * * *

§ 515. Canvass of returns

On the day and at the hour and place named in the notice of election, the authorities ordering the election shall in public session open the ballot boxes, examine and count the ballots in number and amount, examine and canvass the returns, and declare the result of the election. The re-
[50] sult shall be promulgated by publication in one issue of a newspaper published in the subdivision, or if there is none, in a newspaper published in the parish, or if there is none published in the parish, in the newspaper published in an adjoining parish.

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[1] R.S. 18:231 et seq.

[51] * * * * *

§ 516. Proces verbal

The authority ordering the elections shall keep a proces verbal of the canvass and shall forward a copy to the Secretary of State, who shall record it; another copy to the clerk of the district court, who shall record it in the mortgage records; and the remaining copy shall be retained in the archives of the office of the authority ordering the election.

[52] * * * * *

§ 517. Preservation of ballots

The custodian of the archives or records of the authority ordering the election shall preserve for a term of three months from the date of the promulgation of the election, the ballots and other returns.

* * * * *

§ 518. Contests

For a period of sixty days from the date of promulgation of the result of any election held under the provisions of this Part, any person in interest may contest the legality of the bond issue provided for, the tax authorized or the assumption of debt provided for any cause, after which time, no one may contest the legality, formality or regularity of the election or debt assumption for any cause whatsoever. If the validity of any election is not raised within the sixty days herein prescribed, the authority to issue the bonds, and to levy the tax, or assume the debt and the regularity thereof, shall be conclusively presumed, and no court shall have authority to inquire into such matters.

With reference to Part III (A)[1] of this Chapter, if any

[1] R.S. 39-551-39:578.

resolution adopted or proceeding had more than thirty days after the promulgation of the result of the election, no contest, action or proceeding to question the validity or legality of the resolution or proceeding so adopted shall be be-
[53] gun in any court by any person for any cause whatsoever, after the expiration of thirty days from the date when the resolution was adopted or proceeding had.

* * * * *

EXHIBIT "B"

[54]

PUBLIC UTILITIES
OWNERSHIP, OPERATION, ETC.

Chapter 10

SUB-PART C. PLEDGE OF REVENUES OF UTILITY

§ 4251. Bond issue

Any municipal corporation or any parish or any other political subdivision or taxing district authorized to issue bonds under Section 14, Article 14, of the Constitution of Louisiana, all of which are hereinafter in this Sub-part referred to as "municipal corporation" or "municipality" may, in order to construct, acquire, or improve a revenue producing public utility, either within or without its boundaries, obtain funds for the purpose by issuing revenue bonds. For the purposes of this Sub-part, the governing body of the municipal corporation shall be the body empowered to authorize and issue other bonds of the municipal corporation under the provisions of Section 14, Article 14, of the Constitution of Louisiana and Title 39, Sub-title 2, Chapter 4.

[55] * * * * *

§ 4252. Requisites of bonds

Bonds issued under this Sub-part shall be authorized by resolution of the governing body and shall be payable solely from the income and revenues to be derived from the operation of the utility. The bonds shall not constitute an indebtedness or pledge of the general credit of the municipal corporation within the meaning of any constitutional or statutory limitation of indebtedness and shall contain a recital to that effect. They shall be in coupon form but

may be made registerable as to principal if so provided in the resolution authorizing the issuance. The bonds shall be in the denomination of one hundred dollars or a multiple thereof, shall bear interest at a coupon rate not exceeding six per cent per annum, shall mature serially or otherwise in the manner provided by the governing body, but not later than forty years from their date, and shall be made payable at the place provided by the governing body. They may be made redeemable at the option of the issuing municipality prior to maturity at the premium (not greater than ten per cent of the principal amount thereof) which the governing body determines. The bonds shall be signed by the presiding officer and attested by the secretary or clerk of the municipality under the official seal of the municipality, in the manner provided in the resolution authorizing their issuance. Interest coupons to be attached thereto may be executed with the facsimile signature of the officers, and in the event that any officer whose signature appears on the bonds or coupons ceases to hold office before the delivery of the bonds to the purchaser, his signature shall nevertheless be valid and sufficient for all purposes. The bonds shall be sold in the manner and at the times which the governing body determines, except that in no event shall the bonds be sold at a price of less than par or bear an interest rate of greater than six per centum per annum.

[56] * * * * *

§ 4253. Pledge of revenues of utility; receivership

Any bonds issued under this Sub-part shall be payable from and secured by the pledge of the revenues derived from the operation of the utility constructed, acquired, extended or improved with the proceeds thereof, subject only to the prior payment of the reasonable and necessary expenses of operating and maintaining the utility. Any holder

of the bonds or of any of the coupons thereto attached may be appropriate legal action compel performance of all duties required of the governing body and officials of the municipal corporation by the provisions of this Sub-part. If any bond issued hereunder is permitted to go into default as to principal or interest, any court of competent jurisdiction may pursuant to the application of the holder of the bond, appoint a receiver for the utility, which receiver shall be under the duty of operating the utility and collecting and distributing the revenues thereof pursuant to the provisions and requirements of the resolution authorizing the bonds.

If more than one series of bonds is issued hereunder payable from the revenues of any utility, priority of lien on such revenues shall depend on the time of the delivery of the bonds, each series enjoying a lien prior and superior to that enjoyed by any series of bonds subsequently delivered, except that where provision is made in the proceedings authorizing any issue or series of bonds for the issuance of additional bonds in the future on a parity therewith pursuant to procedure or restrictions provided in such proceedings, additional bonds may be issued in the future on a parity with such issue or series in the manner so provided in such proceedings. As amended Acts 1955, No. 72, § 1; Acts 1956, No. 17, § 1.

[57] * * * * * *

§ 4254. Bonds to constitute negotiable instruments

All bonds issued under the provisions of this Sub-part shall constitute negotiable instruments within the meaning of the negotiable instruments laws.

* * * * * *

§ 4255. Sinking fund

Any resolution authorizing the issuance of bonds here-

under shall provide for the creation of a sinking fund into which shall be paid from the revenues of the utility, subject only to prior payment of the reasonable and necessary expenses of operating and maintaining the utility, sums fully sufficient to pay the principal and interest of the bonds, and to create such reserve for contingencies as may be required by the resolution. The moneys in the sinking fund shall be applied to the payment of interest on and principal of the bonds or to the purchase or retirement of the bonds prior to maturity in the manner provided in the resolution.

The resolution authorizing their issuance may contain such covenants with the future holder of the bonds as to

(1) the management and operation of the utility,

(2) the imposition and collection of fees and charges for the products, commodities or services furnished thereby,

(3) the disposition of such fees and revenues,

(4) the issuance of future bonds and the creation of future liens and encumbrances against the utility and the revenues thereof,

* * * * *

[58] (5) the carrying of insurance on the properties constituting the utility.

(6) the disposition of the proceeds of any such insurance, and

(7) other pertinent matters, deemed necessary by the governing body to assure the marketability of the bonds, provided such covenants are not inconsistent with the provisions of this Sub-part.

* * * * *

§ 4256. Charges for commodities or services provided by utility

When any municipality has issued bonds and has pledged the revenues of any utility for the payment thereof as herein provided, the municipality shall impose and collect fees and charges for the products, commodities and services furnished by the utility, including those furnished to the municipality itself and its various agencies and departments, in such amounts and at such rates as shall be fully sufficient at all times to (1) pay the expenses of operating and maintaining the utility, (2) provide a sinking fund sufficient to assure the prompt payment of principal of and interest on the bonds as each falls due, (3) provide such reasonable fund for contingencies as may be required by the resolution authorizing the bonds, and (4) provide an adequate depreciation fund for repairs, extensions and improvements to the utility necessary to assure adequate and efficient service to the public. No board or commission other than the governing body of the municipality shall have authority to fix or supervise the making of these fees and charges.

[59] * * * * *

§ 4257. Property of two or more utilities may be pledged

The governing body of the municipality may authorize bonds under this Sub-part payable from the revenues to be derived from two or more utilities owned and operated by the municipal corporation (whether or not such utilities are related or used in conjunction) for the purpose of constructing, acquiring, extending or improving any one or more of the utilities.

* * * * *

§ 4258. Election to authorize issuance of bonds

Before the resolution authorizing the issuance of bonds

under this Sub-part is adopted by the governing body, the question of the issuance of the bonds shall be submitted to and approved by votes of a majority in number and amount of the property taxpayers who vote at an election held hereunder. The proposition may be submitted at either a special or general election and all matters pertaining thereto, including the qualifications of voters and the manner of calling and conducting the election and canvassing and promulgating the results thereof, shall be governed by the provisions of Chapter 4, Sub-title 2, Title 39.

* * * * *

§ 4259. Refunding bonds

The governing body of any municipality which has heretofore issued or hereafter issue bonds payable from utility revenues under the provisions of this Sub-part or any other law may authorize the issuance of bonds for the purpose of refunding, extending and unifying the whole or any part of the principal, interest and redemption premiums on the outstanding bonds. The refunding bonds may either be sold and the proceeds applied to or deposited in escrow for the retirement of the outstanding bonds, or may be delivered in exchange for the outstanding bonds. The refunding bonds shall be authorized in all respects as original bonds are herein required to be authorized, except [60] that no election shall be necessary in the event the refunding bonds are sold at public sale after advertisement in the manner provided by R.S. 39:570 and the annual principal and interest on the refunding bonds is less than the combined annual principal and interest on the bond issue or issues being so refunded, extended and unified. The governing body, in authorizing the refunding bonds, shall provide for the security of the bonds, the sources from which the bonds are to be paid and for the rights of the holders thereof in all respects as herein pro-

vided for other bonds issued under the authority of this Sub-part. The governing body may also provide that the refunding bonds shall have the same priority of lien on the revenues pledged for their payment as was enjoyed by the bonds refunded. As amended Acts 1962, No. 224, § 1.

* * * * *

§ 4260. Contesting election and bonds; prescription

For a period of sixty days from the date of the promulgation of the result of any election held hereunder, any person in interest may contest the legality of the election, after which time no one shall have any cause of action to contest the regularity, formality or legality of the election for any cause whatever, it shall be conclusively presumed that every legal requirement has been complied with, and no court shall have authority to inquire into such matters after the lapse of sixty days. The resolution authorizing the issuance of bonds shall be published once in a newspaper published in the municipality, or if no newspaper is published therein, then in a newspaper published in the parish in which the municipality is located, or if no newspaper is published in the parish then in a newspaper published in an adjoining parish. For a period of thirty days from the date of the publication any person in interest may contest the legality of the resolution and of the bonds to be issued pursuant thereto and the provisions securing the bonds. After the expiration of thirty days no one shall have any right of action to contest the validity of the bonds or the provisions of the resolution pursuant to which the bonds were issued, and all the bonds shall be conclusively presumed to be legal, and no court shall thereafter have authority to inquire into such matters.

[61] * * * * *

§ 4261. Service charge for sewerage and garbage facilities

Where the revenues pledged to the payment of bonds under this Sub-part are revenues of a utility comprised of sewerage facilities, or garbage facilities, the governing authority of the municipality may each year impose against the owners of all real property in the municipality a service charge for the facilities afforded by the utility, which charge shall not be a lien upon the property. The charges shall be sufficient to provide for the cost of operating and maintaining the utility and paying the interest and principal of the bonds secured by the revenues of the utility. No charge shall be made against the owner of any property which is not benefited by the utility. A list of the names of all owners against whom charges are so made and the amounts of the charge made against each owner shall be certified by the governing authority to the official charged with the assessment of taxes against the property at such time and in such manner in each year as to permit the amount of the charge to be carried upon the assessment roll of the real property in the municipality. Each charge shall be carried on the roll as a special item due by the owner of the property individually and shall be identified on the roll as "Special Sewerage or Garbage Charge of ..... (inserting the name of the municipal corporation)". The charges shall be paid to the official who collects the general taxes assessed against the real property located in the municipality, and shall be paid at the same time and in the same manner as the general taxes are paid. Where the ownership of any real property changes, the municipality may require any subsequent owner seeking sewerage or garbage service to apply therefor, whereupon the charges imposed against the owner shall be assessed and collected in the manner hereinabove provided. The municipality may pay the tax collecting official the

same commission on the amounts collected by him as he receives for the collection of ad valorem taxes, and may [62] pay the assessing official a sum sufficient to reimburse him for the additional expenses occasioned by reason of listing the charges on the assessment roll. The amounts to be paid to the assessor and collector shall be considered one of the costs of operating and maintaining the utility.

* * * * *

§ 4262. No restriction of acts authorized

This Sub-part shall constitute full authority for the accomplishment of all acts herein authorized to be done. No other law restricting the carrying out of the acts authorized to be done shall be construed as applying to any proceedings had or acts done pursuant to this Sub-part.

* * * * *

SUB-PART D. CITIES OF 25,000 TO 250,000

§ 4281. Extension or improvement of municipally owned utility by city of 25,000 to 250,000

Any municipality having a population in excess of twenty-five thousand and less than two hundred fifty thousand owning and operating its electric power plant, waterworks, motor coach transportation, and sewerage system, may construct, maintain, extend, rehabilitate, enlarge or improve any municipality owned public utility either within or without its boundaries. In addition the municipality may consolidate and unite any non-revenue bearing utility with one or more revenue bearing public utilities, which when so united and consolidated, shall be one unit and shall be considered and treated as a single revenue bearing utility.

EXHIBIT "C"

[63]

PAROCHIAL—MUNICIPAL AFFAIRS

Art. 14 § 14

* * * * *

(m). Revenue bonds; acquisition, etc., of utilities.

For the purpose of constructing, acquiring, extending or improving any revenue-producing public utility, the Legislature may authorize municipal corporations to issue bonds secured exclusively, principal and interest, by mortgage on the lands, building, machinery and equipment and by pledge of the income and revenues of such public utility. Such bonds shall not be a charge upon the other income and revenues of the municipality and shall not be included in computing the indebtedness of the municipality for the purpose of any limitation herein.

For the purpose of constructing, acquiring, extending or improving any revenue producing public utility, as defined by the Legislature, the Legislature may authorize any political subdivision or taxing district authorized to issue bonds under authority of this Section 14, excluding municipal corporations, to issue its revenue bonds; which bonds shall be fully negotiable, shall bear interest at a coupon rate not exceeding six per cent per annum, shall [64] mature serially or otherwise not later than forty years from their date, shall not be a charge upon any income or revenue of the district or municipality not derived from the utility, and shall not be included in computing the indebtedness of the subdivision or district, for the purpose of any limitation contained in the Constitution. The Legislature shall provide that any bonds issued hereunder shall be secured by a conventional mortgage on the entire utility so construed, acquired, extended or improved,

and by pledge of the income and revenues thereof, sufficient in amount to pay principal of and interest on said bonds as they severally mature; which security may be foreclosed by seizure and sale of the encumbered property in the manner provided by law for the foreclosure of conventional mortgages, including the right to executory process, and the Legislature shall provide for the granting of a franchise to the purchaser at foreclosure sale, if any, which franchise shall run for a period not exceeding forty years from the date of such sale and shall be subject to any other constitutional or statutory limitations pertaining to the granting of municipal franchises. The Legislature shall also provide that when bonds are issued hereunder, the issuing subdivision or district must impose rates for the services rendered by the utility fully sufficient to operate and maintain the utility, to pay principal of and interest on the bonds, and to provide an adequate fund for depreciation, improvements and extensions, and provisions may be made for encumbering two or more utilities for the construction, acquisition, extension or improvement of any one or more of the utilities encumbered. The Legislature may, in its discretion, require an election by the tax-paying voters of the subdivision or district as a condition precedent to the issuance of such bonds, in which case the voters' qualifications shall be governed by the provisions of this Section XIV pertaining to other bond elections. If the validity of any bonds issued hereunder be not questioned in litigation commenced within thirty days from the date of publication of the ordinance or resolution authorizing the issuance of such bonds, the authority to issue the bonds, the legality thereof, and the security therefor, shall be conclusively presumed and no court shall thereafter have authority to inquire into such matters. Any law or laws enacted by the Legislature for the purpose of putting this added paragraph to Subsection

(m) into effect and which may have been finally passed by the Legislature after the passage of the joint resolution proposing this amendment and prior to the adoption of said amendment by the electors of Louisiana, shall be valid and fully effective if and when said proposed amendment be adopted.

* * * * *

EXHIBIT "D"

[65]

PROCEEDINGS OF THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF HOUMA, STATE OF LOUISIANA, TAKEN AT A REGULAR MEETING HELD ON TUESDAY, SEPTEMBER 12, 1967.

The Mayor and Board of Aldermen of the City of Houma, State of Louisiana, met in regular session at their regular meeting place, the City Hall, Houma, Louisiana, on Tuesday, September 12, 1967, at seven-thirty (7:30) o'clock p.m.

There were present: Hon. G. Leslie Broussard, Mayor, and Aldermen Wilbert A. Bonvillain, Peter G. Bourgeois, Jr., Charles H. Davidson, Sam Lusco and Christian L. Olivier, Jr.

There was absent: None.

The Mayor and Board of Aldermen of the City of Houma, State of Louisiana, were duly convened as the governing authority of said City by Hon. G. Leslie Broussard, Mayor, who stated that the Board was ready for the transaction of business.

[66] The following resolution was offered by Messrs. Bonvillain, Bourgeois, Davidson, Lusco and Olivier and seconded by Messrs. Bonvillain, Bourgeois, Davidson, Lusco and Olivier.

RESOLUTION

A resolution ordering and calling a special election to be held in the City of Houma, State of Louisiana, to authorize the issuance of revenue bonds of said

City, and making application to the State Bond and Tax Board in connection therewith.

BE IT RESOLVED by the Mayor and Board of Aldermen of the City of Houma, State of Louisiana, acting as the governing authority of said City:

SECTION 1. That subject to the approval of the State Bond and Tax Board and under the authority conferred by Part II, Chapter 4, Title 39 and Sub-Part C, Part I, Chapter 10, Title 33 of the Louisiana Revised Statutes of 1950, and other constitutional and statutory authority supplemental thereto, a special election be and the same is hereby called and ordered to be held in the City of Houma, State of Louisiana, on Tuesday, October 24, 1967, between the hours of six (6:00) o'clock a.m. and eight (8:00) o'clock p.m., in compliance with the provisions of Section 1181 of Title 18 of the Louisiana Revised Statutes of 1950 (R.S. 18:1181), and that at the said election there shall be submitted to the resident property taxpayers of said City qualified and entitled to vote at said election under the Constitution and Laws of this State, the following proposition, to-wit:

PROPOSITION

Shall the City of Houma, State of Louisiana, issue its revenue bonds to the amount of Ten Million Dollars ($10,000,000.00), to run twenty-five (25) years from date thereof, with interest at a rate not exceeding six per centum (6%) per annum, for the purpose of constructing and acquiring extensions and improvements to the combined electric light and power plant system, water supply purification and distribution plant system and natural gas system of said City, said bonds to be payable as to principal and interest solely from the income and revenues to be derived from the operation of said combined utility, pursuant to the provisions of Sub-Part C, Part

I, Chapter 10, Title 33 of the Louisiana Revised Statutes of 1950?

SECTION 2. That there shall be published in "The Terrebonne Press", a weekly newspaper published in the City of Houma, Louisiana, and being the official journal of the Mayor and Board of Aldermen of the City of Houma, for thirty (30) clear days in accordance with law, notice of said election, which notice shall be substantially as follows:

[67] NOTICE OF SPECIAL ELECTION

Pursuant to the provisions of a resolution adopted by the Mayor and Board of Aldermen of the City of Houma, State of Louisiana, on September 12, 1967, NOTICE IS HEREBY GIVEN that a special election will be held in said City on Tuesday, October 24, 1967, and that at said election there will be submitted to the resident property taxpayers of said City, qualified and entitled to vote at said election under the Constitution and Laws of this State, the following proposition, to-wit:

PROPOSITION

Shall the City of Houma, State of Louisiana, issue its revenue bonds to the amount of Ten Million Dollars ($10,000,000.00), to run twenty-five (25) years from date thereof, with interest at a rate not exceeding six per centum (6%) per annum, for the purpose of constructing and acquiring extensions and improvements to the combined electric light and power plant system, water supply purification and distribution plant system and natural gas system of said City, said bonds to be payable as to principal and interest solely from the income and revenues to be derived from the operation of said combined utility, pursuant to the provisions of Sub-Part C, Part I, Chapter 10, Title 33 of the Louisiana Revised Statutes of 1950?

The said election will be held at the following polling places situated within the corporate limits of the City of Houma, Louisiana, which polls will open at six (6:00) o'clock a.m. and close at eight (8:00) o'clock p.m., in compliance with the prpvisions of Section 1181 of Title 18 of the Louisiana Revised Statutes of 1950 (R.S. 18:1181), and the following named persons all of whom are registered voters, have been designated as Commissioners and Clerks of Elections, respectively, at the said polling places, to-wit:

POLLING PLACE: Parish Ward 3, Precinct 1 (City Ward 2, Precinct 2) Charles D. Chauvin Building, 100 Verret St., Houma, Louisiana
Mrs. Leola C. Martin, Commissioner;
Mrs. Johnny Crispino, Commissioner;
Mrs. Estelle Chauvin, Commissioner;
Mrs. Barbara P. Johnson, Clerk.

POLLING PLACE: Parish Ward 3, Precinct 2 (City Ward 2, Precinct 3) Court House Building, Main Street, Houma, Louisiana
S. E. Bergeron, Jr., Commissioner;
Edith L. Adoue, Commissioner;
Mrs. N. J. Bonvillain, Commissioner;
Joseph Serpas, Clerk.

POLLING PLACE: Parish Ward 3, Precinct 3 (City Ward 3, Precinct 1) Municipal Auditorium, 880 Verret Street, Houma, Louisiana
Ben J. Boudreaux, Jr., Commissioner;
Judy Smart, Commissioner;
Mrs. Jules Daigle, Commissioner;
Mrs. Bessie Waguespack, Clerk.

[68] POLLING PLACE: Parish Ward 3, Precinct 4 (City Ward 3, Precinct 2) Greater Houma Fire Station, Engeron Street, Houma, Louisiana
Mrs. Royal Richoux, Commissioner;
Louis Gueniot, Commissioner;
Levis Pellegrin, Commissioner;
Mrs. Vincent Lopresto, Clerk.

POLLING PLACE: Parish Ward 3, Precinct 5 (City Ward 4, Precinct 1) V.F.W. Hall, 1613 Barrow Street, Houma, Louisiana

Edward LeBlanc, Commissioner;
Rita Fesi, Commissioner;
Ollie J. Vice, Commissioner;
Emile A. Daigle, Clerk.

POLLING PLACE: Parish Ward 3, Precinct 6 (City Ward 4, Precinct 2) Pellegrin Sales Company, 1005 Dunn Street, Houma, Louisiana
Mrs. Leo Babin, Commissioner;
Mrs. George Larke, Commissioner;
Maurice Dugas, Commissioner;
Archie Bridges, Clerk.

POLLING PLACE: Parish Ward 3, Precinct 7 (City Ward 1, Precinct 1) Bourg Bros. Moving and Storage Co., 602 West Park Avenue, Houma, Louisiana
Mrs. Curll Crochet, Commissioner;
Mrs. Albert Davis, Sr., Commissioner;
Mrs. Wilbert Pontiff, Commissioner;
Mrs. Paul Pontiff, Jr., Clerk.

POLLING PLACE: Parish Ward 3, Precinct 8 (City Ward 1, Precinct 2) West Park School, West Park Avenue, Houma, Louisiana
Mrs. Andrew M. Glynn, Commissioner;
Mrs. Stanley Bergeron, Commissioner;
Mrs. Lura D. Malbrough, Commissioner;
J. M. Jaccuzzo, Clerk.

POLLING PLACE: Parish Ward 3, Precinct 9 (City Ward 1, Precinct 3) Dixieland Hobby Shop, 109 Suthon Avenue, Houma, Louisiana
Mrs. Walter Walker, Commissioner;
Frank King, Commissioner;
Mrs. Albert Rogers, Commissioner;
Steve Fanguy, Clerk.

POLLING PLACE: Parish Ward 3, Precinct 10 (City Ward 1, Precinct 4) American Legion Home, Legion Avenue, Houma, Louisiana
Mrs. Stella B. Boyne, Commissioner;
Mrs. John R. Lyle, Commissioner;
Mrs. Norma C. Millet, Commissioner;
Mrs. Gertrude B. Cenac, Clerk.

POLLING PLACE: Parish Ward 3, Precinct 11 (City Ward 1, Precinct 5) East Park School, East Park Avenue, Houma, Louisiana
Mrs. Sadie S. Eschete, Commissioner;
Mrs. May M. Duplantis, Commissioner;
Mrs. Marjorie L. Labit, Commissioner;
Marie R. LeBouef, Clerk.

[69] POLLING PLACE: Parish Ward 3, Precinct 12 (City Ward 1, Precinct 6) East Park Recreational Center, Robert Street, Houma, Louisiana

Mrs. Wilbert Bergeron, Commissioner;
Mrs. Donald Bonvillain, Commissioner;
Mrs. Joseph Babin, Commissioner;
Ruth M. Boudreaux, Clerk.

POLLING PLACE: Parish Ward 3, Precinct 13 (City Ward 3, Precinct 3) Terrebonne Parish Public Library, East Houma Branch, 1609 East Main Street, Houma, Louisiana

Mae L. Lirette, Commissioner;
Mrs. Betty Desselle, Commissioner;
Mrs. Nolan Roddy, Jr., Commissioner;
Mrs. Lynn Chauvin, Clerk.

POLLING PLACE: Parish Ward 3, Precinct 14 (City Ward 3, Precinct 4) Waterworks District No. 1 Office, 2300 East Main St., Houma, Louisiana

Mrs. I. J. Rhodes, Commissioner;
Mrs. Stanley B. Whitney, Commissioner;
Mrs. Ezelle Kinnard, Commissioner;
Mrs. Joyce B. Dufilho, Clerk.

POLLING PLACE: Parish Ward 3, Precinct 15 (City Ward 3, Precinct 5) Quality Furniture Store, 1910 Tunnel Blvd., Houma, Louisiana

Mrs. Tom Sledge, Commissioner;
Mrs. Stephen Haddad, Commissioner;
Mrs. Jimmie Whitney, Commissioner;
Maurice G. Rome, Clerk.

POLLING PLACE: Parish Ward 3, Precinct 16 (City Ward 3, Precinct 6) Hudman's Texaco Service Station, Grand Caillou Rt., Houma, Louisiana

Mrs. Arnold Autin, Commissioner;
Joe Larussa, Commissioner;
Mrs. Randolph Moore, Commissioner;
Mrs. Vernon Hudman, Clerk.

POLLING PLACE: Parish Ward 3, Precinct 17 (City Ward 3, Precinct 7) Oaklawn School, Grand Caillou Rt., Houma, Louisiana

Juanita B. Schouest, Commissioner;
Georgia M. Sullivan, Commissioner;
Duffy Guidroz, Commissioner;
M. A. Hebert, Clerk.

POLLING PLACE: Parish Ward 3, Precinct 18 and Parish Ward 9, Precinct 2C (City Ward 4, Precinct 3) South Houma Fire Station, Highway 90 West, Houma, Louisiana

Mrs. Marian Patterson, Commissioner;
Mrs. Archie R. Bridges, Commissioner;
Mrs. Joe Teuton, Sr., Commissioner;
Mrs. Edith Talbot Denson, Clerk.

POLLING PLACE: Parish Ward 3, Precinct 22 (City Ward 2, Precinct 1) Terrebonne High School, West Main Street, Houma, Louisiana
Mrs. Roy Breerwood, Commissioner;
Mrs. Yvonne D. Faucheaux, Commissioner;
Mrs. Isabelle T. Vaquelin, Commissioner;
Mrs. George B. Taylor, Clerk.

[70] That the said election will be held in accordance with the provisions of Part II, Chapter 4, Title 39 of the Louisiana Revised Statutes of 1950, and other constitutional and statutory authority supplemental thereto, and the officers appointed to hold the said election, or such substitutes therefor as may be selected and designated in compliance with Section 505 of Title 39 of the Louisiana Revised Statutes of 1950 (R.S. 39:505), will make due returns thereof to the Mayor and Board of Aldermen of the City of Houma, State of Louisiana, the governing authority of said City. Ballot boxes will be used in holding this election.

NOTICE IS HEREBY FURTHER GIVEN that said Mayor and Board of Aldermen will meet at its regular meeting place, the City Hall, Houma, Louisiana, on Wednesday, October 25, 1967, at seven-thirty (7:30 o'clock p.m. to open the ballot boxes used at the said election, examine and count the ballots in number and amount, examine and canvass the returns and declare the result of said election.

THUS DONE AND SIGNED at Houma, Louisiana, on this, the 12th day of September, 1967.

ATTEST: ---------- Mayor

---------- Clerk

SECTION 3. That this Mayor and Board of Aldermen, acting as the governing authority of said City, shall meet at its regular meeting place, the City Hall, Houma, Louisiana, on Wednesday, October 25, 1967, at seven-thirty (7:30) o'clock p.m., and shall then and there in open and public session proceed to open the ballot boxes used at the said election examine and count the ballots in number and amount, examine and canvass the returns and declare the result of said election.

SECTION 4. That the polling places set forth in the foregoing Notice of Special Election and situated within the corporate limits of the City of Houma, Louisiana, be and the same are hereby designated as the polling places at which to hold said election, and the persons named in said Notice of Special Election, all being registered voters of said City, be and they are hereby appointed as Commissioners and Clerks of Election, respectively, to serve at the polling places as indicated.

SECTION 5. That the officers above designated, or such substitutes therefor as may be selected and designated in compliance with Section 505 of Title 39 of the Louisiana [71] Revised Statutes of 1950 (R.S. 39:505), shall hold the said special election to conform with the provisions of the foregoing constitutional and statutory authority, and shall make due returns of the said election for the meeting of this Mayor and Board of Aldermen to be held at its regular meeting place, the City Hall, Houma, Louisiana, on Wednesday, October 25, 1967, at seven-thirty (7:30) o'clock p.m. Ballot boxes, rather than voting machines, shall be used in the holding of said election. The compensation of said election officers be and the same is hereby fixed at the sum prescribed by law.

SECTION 6. That the Clerk be and he is hereby em-

powered, authorized and directed to arrange for and to furnish to the said election officers, in ample time for the holding of said election, the necessary ballot boxes, blanks for tally sheets, numbered lists of voters in number and amount, duplicate compiled statements, and any and all other election paraphernalia, and he is hereby further empowered, authorized and directed to have printed and to furnish to the said election officers the ballots necessary for the holding of said election, which ballots shall be drawn up in accordance with law and in conformity with this resolution.

SECTION 7. That the Registrar of Voters in and for the Parish of Terrebonne, Louisiana, shall furnish to said election officers in ample time for the holding of said election the precinct registers in accordance with the provisions of Part X, Chapter I of Title 18 and Part II of Chapter 2 of Title 39 of the Louisiana Revised Statutes of 1950 and the precinct binders in accordance with the provisions of Section 509, Title 39 of the Louisiana Revised Statutes of 1950 (R.S. 39:509). That the said Registrar of Voters shall be requested to prepare a list of the resident property taxpayers of the City of Houma, Louisiana, qualified and entitled to vote at said election under the Constitution and Laws of this State, together with the assessed valuation of each taxpayer's property as shown by the assessment roll last made, filed and of record prior to said election, in order to assist the said election officers.

SECTION 8. That application be and the same is hereby further made to said State Bond and Tax Board for its consent and authority to issue and sell said bonds and provide for the payment thereof in the event said election carries, said bonds to be payable solely from the income and revenues to be derived from the operation of the combined electric light and power plant system, water

supply purification and distribution plant system and natural gas system of said City.

SECTION 9. That a certified copy of this resolution shall be forwarded to the said State Bond and Tax Board by the Clerk of the City of Houma, with a letter requesting the prompt consideration and approval of this application.

This resolution having been submitted to a vote, the vote thereon was as follows:

[72] YEAS: Christian Louis Olivier, Jr., Wilbert A. Bonvillain, Sam Lusco, Charles H. Davidson and Peter G. Bourgeois, Jr.

NAYS: None.

ABSENT: None.

And the resolution was declared adopted on this, the 12th day of September, 1967.

/s/ Robert F. Bourg
Clerk

/s/ G. Leslie Broussard
Mayor

[73] STATE OF LOUISIANA
PARISH OF TERREBONNE

I, the undersigned Clerk of the City of Houma, State of Louisiana, do hereby certify that the foregoing eight (8) pages constitute a true and correct copy of the proceedings taken by the Mayor and Board of Aldermen of said City on September 12, 1967, ordering and calling a special election to be held in the City of Houma, State of Louisiana, to authorize the issuance of revenue bonds of said City, and making application to the State Bond and Tax Board in connection therewith.

IN FAITH WHEREOF, witness my official signature and the impress of the official seal of said City at Houma, Louisiana, on this, the 12th day of September, 1967.

/s/ Robert L. Bourg
Clerk

EXHIBIT "E"

[74]

PROCEEDINGS OF THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF HOUMA, STATE OF LOUISIANA, TAKEN AT A SPECIAL MEETING HELD ON WEDNESDAY, OCTOBER 25, 1967.

The Mayor and Board of Aldermen of the City of Houma, State of Louisiana, met in special session at their regular meeting place, the City Hall, Houma, Louisiana, on Wednesday, October 25, 1967, at seven-thirty (7:30) o'clock p.m., pursuant to the provisions of a resolution adopted on September 12, 1967, and the following written notice served on each and every member of the Board and duly posted in the manner required by law, viz:

Houma, Louisiana
October 23, 1967

NOTICE IS HEREBY GIVEN that a special meeting of the Mayor and Board of Aldermen of the City of Houma, State of Louisiana, has been ordered and called and will be held at their regular meeting place, the City Hall, Houma, Louisiana, on Wednesday, October 25, 1967, at seven-thirty (7:30) o'clock p.m., for the following purposes, to-wit:

1. To open the ballot boxes used at the special election to be held in the City of Houma, State of Louisiana, on Tuesday, October 24, 1967, examine and count the ballots in number and amount, examine and canvass the the returns and declare the result of the said special election.

2. To consider and transact any other business which may be properly brought before the Mayor and Board of Aldermen.

This will be an important meeting and you are urged to attend. The meeting will be open to the public as required by law.

/s/ G. Leslie Broussard
Mayor, City of Houma, Louisiana

STATE OF LOUISIANA
PARISH OF TERREBONNE

Received the foregoing call and did serve a duly certified copy on the members of the Board of Aldermen of the City of Houma, Louisiana, in the manner, on the date and at the hour specified opposite their respective names:

[75]

WILBERT A. BONVILLAIN
/s/ Wilbert A. Bonvillain 4:12 P.M., October 24, 1967

PETER G. BOURGEOIS, JR.
/s/ Mrs. Peter Bourgeois 4:35 P.M., October 24, 1967

CHARLES H. DAVIDSON
/s/ C. H. Davidson 4:45 P.M., October 24, 1967

SAM LUSCO
/s/ Mrs. Sam Lusco 5:04 P.M., October 24, 1967

CHRISTIAN L. OLIVIER, JR.
/s/ Christian L. Olivier, Jr. 4:20 P.M., October 24, 1967

all of which was done more than eight (8) hours prior to the hour and date set for the holding of said meeting, as provided by law.

IN FAITH WHEREOF, I hereby make this my return and hereunto affix my signature at Houma, Louisiana, on this, the 24 day of October, 1967.

/s/ Ptn. M. Bergeron
Title:

There were present: Hon. G. Leslie Broussard, Mayor,

and Aldermen Wilbert A. Bonvillain, Peter G. Bourgeois, Jr., Charles H. Davidson, Sam Lusco and Christian L. Olivier, Jr.

There was absent: None.

The Mayor and Board of Aldermen of the City of Houma, State of Louisiana, were duly convened as the governing authority of said City by Hon. G. Leslie Broussard, Mayor, who announced the purposes of the meeting in accordance with the aforesaid written notice thereof and then stated that the Mayor and Board of Aldermen were ready for the transaction of business.

[76] The following resolution was offered by Mr. Olivier and seconded by Mr. Bourgeois:

RESOLUTION

A resolution providing for the opening of the ballot boxes used at the special election held in the City of Houma, State of Louisiana, on Tuesday, October 24, 1967, canvassing the returns and declaring the result of the said election.

BE IT RESOLVED by the Mayor and Board of Aldermen of the City of Houma, State of Louisiana, acting as the governing authority of said City:

SECTION 1. That this Mayor and Board of Aldermen do now proceed in open and public session to open the ballot boxes used at the special election held in the City of Houma, State of Louisiana, on Tuesday, October 24, 1967, to authorize the issuance of revenue bonds of said City, and proceed to examine and count the ballots in number and amount, examine and canvass the returns and declare the result of the said special election.

SECTION 2. That a Proces Verbal of the canvass of the returns of said special election shall be made and that a certified copy thereof shall be forwarded to the Secretary of State, Baton Rouge, Louisiana, who shall record the same in his office; that another certified copy thereof shall be forwarded to the Clerk of Court and Ex-Officio Recorder of Mortgages in and for the Parish of Terrebonne, Louisiana, who shall record the same in the Mortgage Records of said Parish; and that another copy thereof shall be retained in the archives of this Mayor and Board of Aldermen.

SECTION 3. That the result of said special election shall be promulgated by publication in the manner provided by law.

This resolution having been submitted to a vote, the vote thereon was as follows:

YEAS: Aldermen Bonvillain, Bourgeois, Davidson, Lusco and Olivier.

NAYS: None.

ABSENT: None.

And the resolution was declared adopted on this, the 25th day of October, 1967.

/s/ Robert F. Bourg
Clerk

/s/ G. Leslie Broussard
Mayor

[77] PROCES VERBAL

PROCES VERBAL OF THE CANVASS OF THE VOTES CAST AT THE SPECIAL ELECTION HELD IN THE CITY OF HOUMA, STATE OF LOUISIANA, ON TUESDAY, OCTOBER 24, 1967.

BE IT KNOWN AND REMEMBERED that on Wednesday, October 25, 1967, at seven-thirty (7:30) o'clock

p.m., at its regular meeting place, the City Hall, Houma, Louisiana, the Mayor and Board of Aldermen of the City of Houma, State of Louisiana, acting as the governing authority of said City and being the authority ordering the special election held therein on Tuesday, October 24, 1967, with the following members present:

Hon. G. Leslie Broussard, Mayor, and Aldermen Wilbert A. Bonvillain, Peter G. Bourgeois, Jr., Charles H. Davidson, Sam Lusco and Christian L. Olivier, Jr.;

There being absent: None;

did, in public session, open the ballot boxes, did examine and count the ballots in number and amount, did examine and canvass the returns and did declare the result of the said special election, there having been submitted at said special election the following proposition, to-wit:

PROPOSITION

> Shall the City of Houma, State of Louisiana, issue its revenue bonds to the amount of Ten Million Dollars ($10,000,000.00), to run twenty-five (25) years from date thereof, with interest at a rate not exceeding six per centum (6%) per annum, for the purpose of constructing and acquiring extensions and improvements to the combined electric light and power plant system, water supply purification and distribution plant system and natural gas system of said City, said bonds to be payable as to principal and interest solely from the income and revenues to be derived from the operation of said combined utility, pursuant to the provisions of Sub-Part C, Part I, Chapter 10, Title 33 of the Louisiana Revised Statutes of 1950?

There was found by said count and canvass that the following votes in number and the following amounts in valuation of property had been cast at the said special elec-

tion IN FAVOR OF and AGAINST, respectively, the proposition as hereinabove set forth at the following polling places, to-wit:

[78] POLLING PLACE: Parish Ward 3, Precinct 1 (City Ward 2, Precinct 2) Charles D. Chauvin Building, 100 Verret St., Houma, Louisiana
No. of votes for 91; Property Valuation $110,540
No. of votes against 25; Property Valuation $ 24,060

POLLING PLACE: Parish Ward 3, Precinct 2 (City Ward 2, Precinct 3) Court House Building, Main Street, Houma, Louisiana
No. of votes for 90; Property Valuation $274,118
No. of votes against 36; Property Valuation $ 94,684

POLLING PLACE: Parish Ward 3, Precinct 3 (City Ward 3, Precinct 1) Municipal Auditorium, 880 Verret Street, Houma, Louisiana
No. of votes for 134; Property Valuation $389,260
No. of votes against 35; Property Valuation $ 78,760

POLLING PLACE: Parish Ward 3, Precinct 4 (City Ward 3, Precinct 2) Greater Houma Fire Station, Engeron Street, Houma, Louisiana
No. of votes for 89; Property Valuation $143,455
No. of votes against 82; Property Valuation $ 74,590

POLLING PLACE: Parish Ward 3, Precinct 5 (City Ward 4, Precinct 1) V.F.W. Hall, 1613 Barrow Street, Houma, Louisiana
No. of votes for 78; Property Valuation $147,402
No. of votes against 24; Property Valuation $ 21,440

POLLING PLACE: Parish Ward 3, Precinct 6 (City Ward 4, Precinct 2) Pellegrin Sales Company, 1005 Dunn Street, Houma, Louisiana
No. of votes for 105; Property Valuation $135,860
No. of votes against 26; Property Valuation $ 31,200

[79] POLLING PLACE: Parish Ward 3, Precinct 7 (City Ward 1, Precinct 1) Bourg Bros. Moving and Storage Co., 602 West Park Avenue, Houma, Louisiana
No. of votes for 86; Property Valuation $ 82,585
No. of votes against 31; Property Valuation $ 30,175

POLLING PLACE: Parish Ward 3, Precinct 8 (City Ward 1, Precinct 2) West Park School, West Park Avenue, Houma, Louisiana

No. of votes for 112; Property Valuation $231,897
No. of votes against 36; Property Valuation $ 76,080

POLLING PLACE: Parish Ward 3, Precinct 9 (City Ward 1, Precinct 3) Dixieland Hobby Shop, 109 Suthon Avenue, Houma, Louisiana
No. of votes for 107; Property Valuation $201,325
No. of votes against 25; Property Valuation $ 26,760

POLLING PLACE: Parish Ward 3, Precinct 10 (City Ward 1, Precinct 4) American Legion Home, Legion Avenue, Houma, Louisiana
No. of votes for 72; Property Valuation $123,440
No. of votes against 31; Property Valuation $ 41,340

POLLING PLACE: Parish Ward 3, Precinct 11 (City Ward 1, Precinct 5) East Park School, East Park Avenue, Houma, Louisiana
No. of votes for 110; Property Valuation $ 78,295
No. of votes against 50; Property Valuation $ 41,620

POLLING PLACE: Parish Ward 3, Precinct 12 (City Ward 1, Precinct 6) East Park Recreational Center, Robert Street, Houma, Louisiana
No. of votes for 123; Property Valuation $ 96,110
No. of votes against 58; Property Valuation $ 40,595

[80] POLLING PLACE: Parish Ward 3, Precinct 13 (City Ward 3, Precinct 3) Terrebonne Parish Public Library, East Houma Branch, 1609 East Main Street, Houma, Louisiana
No. of votes for 43; Property Valuation $ 52,370
No. of votes against 37; Property Valuation $ 34,130

POLLING PLACE: Parish Ward 3, Precinct 14 (City Ward 3, Precinct 4) Waterworks District No. 1 Office, 2300 East Main St., Houma, Louisiana
No. of votes for 113; Property Valuation $ 68,695
No. of votes against 50; Property Valuation $ 44,680

POLLING PLACE: Parish Ward 3, Precinct 15 (City Ward 3, Precinct 5) Quality Furniture Store, 1910 Tunnel Blvd., Houma, Louisiana
No. of votes for 87; Property Valuation $ 89,170
No. of votes against 83; Property Valuation $113,754

POLLING PLACE: Parish Ward 3, Precinct 16 (City Ward 3, Precinct 6) Hudman's Texaco Service Station, Grand Caillou Rt., Houma, Louisiana
No. of votes for 99; Property Valuation $103,441
No. of votes against 75; Property Valuation $ 79,230

POLLING PLACE: Parish Ward 3, Precinct 17 (City Ward 3, Precinct 7) Oaklawn School, Grand Caillou

Rt., Houma, Louisiana
No. of votes for 93; Property Valuation $ 94,630
No. of votes against 72; Property Valuation $ 76,500

POLLING PLACE: Parish Ward 3, Precinct 18 and Parish Ward 9, Precinct 2C (City Ward 4, Precinct 3) South Houma Fire Station, Highway 90 West, Houma, Louisiana
No. of votes for 130; Property Valuation $244,740
No. of votes against 91; Property Valuation $148,235

POLLING PLACE: Parish Ward 3, Precinct 22 (City Ward 2, Precinct 1) Terrebonne High School, West Main Street Houma, Louisiana
No. of votes for 66; Property Valuation $ 68,925
No. of votes against 29; Property Valuation $ 30,435

[81] The polling places above specified being the only polling places designated at which to hold the said election, it was therefore shown that there was a majority of 932 votes in number, representing an assessed valuation of $1,627,990 in amount cast IN FAVOR OF the proposition as hereinabove set forth.

Therefore, the Mayor and Board of Aldermen of the City of Houma, State of Louisiana, acting as the governing authority of said City, did declare and proclaim and do hereby declare and proclaim in open and public session that the proposition as hereinabove set forth was duly carried by a majority in both number and amount of votes cast by the qualified voters, resident property taxpayers, voting at the said special election held in said City on Tuesday, October 24, 1967.

THUS DONE AND SIGNED at Houma, Louisiana, on this, the 25th day of October, 1967.

/s/ Robert F. Bourg
Clerk

/s/ G. Leslie Broussard
Mayor

MEMBERS, BOARD OF ALDERMEN

/s/ Sam Lusco
/s/ C. H. Davidson
/s/ Wilbert A. Bonvillain
/s/ Christian L. Olivier, Jr.
/s/ Peter G. Bourgeois, Jr.

[82] PROCLAMATION

I, G. LESLIE BROUSSARD, Mayor of the City of Houma, State of Louisiana, do hereby announce and proclaim the result of the special election held in said City on Tuesday, October 24, 1967, as ascertained by the canvass of the votes cast at the said election made by the Mayor and Board of Aldermen of the City of Houma, State of Louisiana, and assembled at its regular meeting place, the City Hall, Houma, Louisiana, on Wednesday, October 25, 1967, at seven-thirty (7:30) o'clock p.m., which canvass showed the following result upon the proposition submitted at the said special election, to-wit:

PROPOSITION

Shall the City of Houma, State of Louisiana, issue its revenue bonds to the amount of Ten Million Dollars ($10,000,000.00), to run twenty-five (25) years from date thereof, with interest at a rate not exceeding six per centum (6%) per annum, for the purpose of constructing and acquiring extensions and improvements to the combined electric light and power plant system, water supply purification and distribution plant system and natural gas system of said City, said bonds to be payable as to principal and interest solely from the income and revenues to be derived from the operation of said combined utility, pursuant to the provisions of Sub-Part C, Part I, Chapter 10, Title 33 of the Louisiana Revised Statutes of 1950?

There was found by said count and canvass that the following votes in number and the following amounts in valuation of property had been cast at the said special election IN FAVOR OF and AGAINST, respectively, the proposition as hereinabove set forth at the following polling places, to-wit:

[83] POLLING PLACE: Parish Ward 3, Precinct 1 (City Ward 2, Precinct 2) Charles D. Chauvin Building, 100 Verret St., Houma, Louisiana
No. of votes for 91; Property Valuation $110,540
No. of votes against 25; Property Valuation $ 24,060

POLLING PLACE: Parish Ward 3, Precinct 2 (City Ward 2, Precinct 3) Court House Building, Main Street, Houma, Louisiana
No. of votes for 90; Property Valuation $274,118
No. of votes against 36; Property Valuation $ 94,684

POLLING PLACE: Parish Ward 3, Precinct 3 (City Ward 3, Precinct 1) Municipal Auditorium, 880 Verret Street, Houma, Louisiana
No. of votes for 134; Property Valuation $389,260
No. of votes against 35; Property Valuation $ 78,760

POLLING PLACE: Parish Ward 3, Precinct 4 (City Ward 3, Precinct 2) Greater Houma Fire Station, Engeron Street, Houma, Louisiana
No. of votes for 89; Property Valuation $143,455
No. of votes against 82; Property Valuation $ 74,590

POLLING PLACE: Parish Ward 3, Precinct 5 (City Ward 4, Precinct 1) V.F.W. Hall, 1613 Barrow Street, Houma, Louisiana
No. of votes for 78; Property Valuation $147,402
No. of votes against 24; Property Valuation $ 21,440

POLLING PLACE: Parish Ward 3, Precinct 6 (City Ward 4, Precinct 2) Pellegrin Sales Company, 1005 Dunn Street, Houma, Louisiana
No. of votes for 105; Property Valuation $135,860
No. of votes against 26; Property Valuation $ 31,200

[84] POLLING PLACE: Parish Ward 3, Precinct 7 (City Ward 1, Precinct 1) Bourg Bros. Moving and Storage Co., 602 West Park Avenue, Houma, Louisiana
No. of votes for 86; Property Valuation $ 82,585
No. of votes against 31; Property Valuation $ 30,175

POLLING PLACE: Parish Ward 3, Precinct 8 (City Ward 1, Precinct 2) West Park School, West Park Avenue, Houma, Louisiana
No. of votes for 112; Property Valuation $231,897
No. of votes against 36; Property Valuation $ 76,080

POLLING PLACE: Parish Ward 3, Precinct 9 (City Ward 1, Precinct 3) Dixieland Hobby Shop, 109 Suthon Avenue, Houma, Louisiana

No. of votes for 107; Property Valuation $201,325
No. of votes against 25; Property Valuation $ 26,760

POLLING PLACE: Parish Ward 3, Precinct 10 (City Ward 1, Precinct 4) American Legion Home, Legion Avenue, Houma, Louisiana
No. of votes for 72; Property Valuation $123,440
No. of votes against 31; Property Valuation $ 41,340

POLLING PLACE: Parish Ward 3, Precinct 11 (City Ward 1, Precinct 5) East Park School, East Park Avenue, Houma, Louisiana
No. of votes for 110; Property Valuation $ 78,295
No. of votes against 50; Property Valuation $ 41,620

POLLING PLACE: Parish Ward 3, Precinct 12 (City Ward 1, Precinct 6) East Park Recreational Center, Robert Street, Houma, Louisiana
No. of votes for 123; Property Valuation $ 96,110
No. of votes against 58; Property Valuation $ 40,595

[85] POLLING PLACE: Parish Ward 3, Precinct 13 (City Ward 3, Precinct 3) Terrebonne Parish Public Library, East Houma Branch, 1609 East Main Street, Houma, Louisiana
No. of votes for 43; Property Valuation $ 52,370
No. of votes against 37; Property Valuation $ 34,130

POLLING PLACE: Parish Ward 3, Precinct 14 (City Ward 3, Precinct 4) Waterworks District No. 1 Office, 2300 East Main St., Houma, Louisiana
No. of votes for 113; Property Valuation $ 68,695
No. of votes against 50; Property Valuation $ 44,680

POLLING PLACE: Parish Ward 3, Precinct 15 (City Ward 3, Precinct 5) Quality Furniture Store, 1910 Tunnel Blvd., Houma, Louisiana
No. of votes for 87; Property Valuation $ 89,170
No. of votes against 83; Property Valuation $113,754

POLLING PLACE: Parish Ward 3, Precinct 16 (City Ward 3, Precinct 6) Hudman's Texaco Service Station, Grand Caillou Rt., Houma, Louisiana
No. of votes for 99; Property Valuation $103,441
No. of votes against 75; Property Valuation $ 79,230

POLLING PLACE: Parish Ward 3, Precinct 17 (City Ward 3, Precinct 7) Oaklawn School, Grand Caillou Rt., Houma, Louisiana
No. of votes for 93; Property Valuation $ 94,630
No. of votes against 72; Property Valuation $ 76,500

POLLING PLACE: Parish Ward 3, Precinct 18 and Parish Ward 9, Precinct 2C (City Ward 4, Precinct 3) South Houma Fire Station, Highway 90 West, Houma, Louisiana

No. of votes for 130; Property Valuation $244,740
No. of votes against 91; Property Valuation $148,285

POLLING PLACE: Parish Ward 3, Precinct 22 (City Ward 2, Precinct 1) Terrebonne High School, West Main Street Houma, Louisiana

No. of votes for 66; Property Valuation $ 68,925
No. of votes against 29; Property Valuation $ 30,435

[86] The polling places above specified being the only polling places designated at which to hold the said election, it was therefore shown that there was a majority of 932 votes in number, representing an assessed valuation of $1,627,990 in amount cast IN FAVOR OF the proposition as hereinabove set forth.

THEREFORE, in accordance with the result of the canvass of returns and the action of the Mayor and Board of Aldermen of the City of Houma, State of Louisiana, acting as the governing authority of said City, I, G. LESLIE BROUSSARD, Mayor of said City, do hereby proclaim, declare and announce the said proposition as hereinabove set forth to have been duly carried by a majority in both number and amount of the votes cast by the qualified voters, resident property taxpayers, voting at the said special election held in the City of Houma, State of Louisiana, on Tuesday, October 24, 1967.

THUS DONE AND SIGNED at Houma, Louisiana, on this, the 25th day of October, 1967.

/s/ G. Leslie Broussard
Mayor

ATTEST:
/s/ Robert F. Bourg
Clerk

[87]

IN THE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

CIVIL ACTION

No. 67-1853

SECTION C

JOSEPH Q. CIPRIANO

VS

CITY OF HOUMA,
G. LESLIE BROUSSARD, MAYOR,
CHRISTIAN L. OLIVIER, CHARLES DAVIDSON,
PETER BOURGEOIS, JR., SAMUEL LUSCO and
WILBERT P. BONVILLAIN

Deposition of JOSEPH Q. CIPRIANO taken February 29, 1968 in the office of Messrs. Watkins, Watkins & Walker, Attorneys at Law, Houma, Louisiana, commencing at 11:00 o'clock a. m.

APPEARANCES:

Messrs. Watkins, Watkins & Walker
Attorneys for Plaintiff, represented by
Mr. Kenneth Watkins
Mr. Ted J. Borowski
Mr. Eugene Huppenbauer
Attorneys for Defendants

STIPULATION

It is stipulated and agreed by and between counsel for the parties that this deposition is being taken for purposes of discovery, that all formalities including reading, signing, sealing, certification and filing

are waived, and that all objections except those as to the form of the questions are reserved to the time of the trial.

MR. WATKINS:

To the extent that this deposition is requested by Mr. Borowski and Mr. Huppenbauer to verify all allegations needed for the purpose of the previously agreed upon agreement to stipulate the facts as alleged in this lawsuit I have no objection to this deposition depending upon the nature of it or the purpose of it. Beyond that scope we may have objection.

MR. HUPPENBAUER:

At the time of the filing of the notice for this deposition the deposition was originally fixed for February 20, 1968. The deposition was postponed by agreement of counsel at the request of Mr. Borowski and a pretrial conference was held prior to the taking of the deposition. Counsel will admit that perhaps the sequence of the deposition and the pretrial conference is somewhat out of order, but it was counsel's intention to depose the plaintiff prior to the pretrial. Nevertheless, we wish to proceed with the deposition as originally planned.

JOSEPH Q. CIPRIANO, after being duly sworn by Lucile W. Cain, Official Court Reporter for the 17th Judicial District Court, Parishes of Terrebonne and Lafourche, Louisiana, testified as follows:

MR. HUPPENBAUER:

Q Mr. Cipriano, are you the Joseph Q. Cipriano plaintiff in Civil Action No. 67-1853 filed in United States District Court, Eastern District of Louisiana, New Orleans Division?

A If that's the correct number. I wouldn't be familiar with the number. Yes.

Q You are the plaintiff who has filed suit against the City of Houma and Mayor and Board of Aldermen in Federal Court?

A In the United States District Court, yes.

Q One of the allegations of your petition is that you are being deprived of certain civil rights. Can you explain what civil rights you are being deprived of?

A Well, after consulting with Mr. Watkins about the problem that confronted me, of course, and a number of other folks I'm certain as not being an owner of real property in the City of Houma I was unable to vote in the election that was held as a revenue bond election. It was necessary to be a property owner, and, of course, it was presented to the public as not being, having any taxes involved, and as a result, of course, I was deprived of a right to vote for taxes which in a sense would have been imposed upon me or would be imposed upon me by others.

Q Are you sure whether or not there would be any taxes involved as a result of this election?

A They said there was no taxes, but in my particular case there would be an increase in costs of electrical service, and, of course, if this is what provides the revenues then this in essence is taxes.

Q On what basis do you state that there would be an increase in the cost of electrical services to you?

A Because the City of Houma's rates are higher in my particular situation and unquestionably would cost me more money each month.

Q What do you mean in your particular situation? Will you explain that?

A My average use of electric service.

Q Do you pay to the City of Houma at this time rates for electrical service?

A No, I don't. I pay them to the Louisiana Power & Light Company.

Q Do you know the difference in rate between the power company and the city?

A Not to the exact penny. I think the breaking point is somewhere around 6, 7, 800 kilowatt hours and after that point it probably, the cost above that of Louisi-

ana Power & Light Company would range somewhere I think 4.50 and $5.00 a thousand kilowatt hours.

Q Why do you say you would be paying a higher rate to the City when you are presently paying to the power company. Why would you not continue to pay your rate to the power company?

A In the same bond issue they presented the fact that they would hope to take over the utilities in East Houma.

Q Was this in the proposition that was submitted to the voters?

A Yes, it was indicated that it was to provide all of the services within the incorporated area of the City of Houma, and certainly this would include both the water and the electric company operations in those areas.

Q Do you reside within the city limits of the City of Houma?

A Yes, I do.

Q Did you actually look at one of the ballots submitted to the voters in this election?

A At one of the ballots, no sir. I would say not the ballot, because I wasn't allowed to vote, so I wouldn't have seen them. I did see them after the election when the votes were promulgated. Would that be reasonable to say I'd seen them?

Q Did you see the proposition at all as published in the newspaper?

A Yes.

Q You read the proposition that was published in the newspaper which was submitted to the voters?

A Yes, sir.

Q Have you voted in any other previous election called by the city for either bonds to be secured by ad valorem taxation or revenues of the utility system?

A No.

Q How long have you been a resident of the City of Houma?

A Since June 1st of 1965.

Q You are a registered voter in the city?

A Yes, sir, I am.

Q You do not own any property in the city?

A Not any real property.

Q Do you rent property?

A Yes, sir.

Q You're living in the city limits?

A Yes, sir.

Q Did you attempt to vote at all in this particular election, Mr. Cipriano?

A No, I didn't, because it was advertised that you must be a registered property owner.

Q You did not go to the polls?

A No, sir, I did not go to the polls.

Q Your action seeks an injunction against the city. Why did you not bring this suit prior to the election date?

A Well, I guess I would first say that I was quite confident that no local voters would pass such a proposition and was certainly busy working to have the proposition defeated.

Q Why would you not have desired to vote against this election since you were deprived of your right and had sued to enjoin the election prior to the date of the election?

A I'm not quite certain I understand that.

Q Since you claim you have been deprived of a civil right why would you not have enjoined the city so that you could exercise your civil right and vote or have a Court pass on that?

MR. WATKINS:

I think Mr. Cipriano has previously answered that question that his counsel when he discussed this

gave him the legal grounds when he complained of not having his right and his counsel, he's not a lawyer that would have any legal explanation.

MR. HUPPENBAUER:

Q Where are you presently employed?

A At Louisiana Power & Light Company here in Houma.

Q At the regional office here?

A At the district office on Tunnel Boulevard.

Q Do you know when the city held their last election on these revenue bonds? Was that election held while you were a resident here?

A There have been no previous revenue issues or there were none except this one since I've been residing in the City of Houma. The only other comments I can make would be purely hearsay that it was in '62 and '63.

Q Where did you reside before you arrived here in the City of Houma?

A In the community of Luling in St. Charles Parish.

Q You have brought this action under Rule 23 of the Federal Rules which is the class action statute. Would you define what class you determine yourself to be in to bring this action?

A Well, I would say generally that this would be the group of non-property owners who were not allowed to vote in this election and all of the people who did not own property were not allowed to vote.

Q Are you stating that the law did not permit you to vote or the city disallowed you to vote?

A Well, I couldn't give you the legal ramifications. It was advertised and stated a number of times. As I recall the city called for the election in assuming promotional material that you had to be a registered voter and property owner in order to vote in this election.

Q You do not know the particular statute under which the election was called, do you?

A No, sir, not as such other than what Mr. Watkins has informed me.

Q Are you at all familiar with a suit brought against the city in the state court enjoining the effect of this bond election?

A Is there a specific suit?

Q Dupre vs. City of Houma and others. Are you familiar with that suit?

A I am familiar that one has been filed.

Q Do you have an interest in that suit?

A No, sir. When you say an interest I'm not associated with it in any way.

Q I know you're not a party plaintiff. You have no personal or financial interest in that suit?

A No financial interest at all. As far as a personal interest I would say that I would be interested in having the bond election—what would we say—set aside.

Q Mr. Cipriano, does your employer have any interest in this litigation?

A I would presume that they would certainly have a general interest in it, because certainly they opposed the bond election.

MR. WATKINS:

Don't answer that question any further, Joe. It is entirely beyond the scope of this. This is a private suit brought.

MR. BOROWSKI:

Q You stated that you have been living in the City of Houma here in Terrebonne Parish since June 1st, 1965.

A That is the day I moved in, yes, sir.

Q Prior to this you had lived in Luling?

A Yes, sir, that is correct.

Q Did you own any property there?

A No, sir, I did not.

Q Do you own any property in the State of Louisiana in any parish?
A No, sir, not at this time.

Q Either that you purchased yourself or inherited?
A No, sir. This wouldn't include a tomb or anything like that?

Q No. Are you married?
A Yes.

Q You have any children?
A Yes.

Q Where do your wife and children reside?
A At 304 Foster Drive.

Q Did they move to Houma with you on June 1st, '65?
A Yes.

Q Prior thereto they lived with you in Luling?
A Yes.

Q Did you all vote in Luling?
A Yes.

Q When was the last time you voted there?
A Well, I guess the last time there was an election when I was living there. I don't recall the date.

Q Did you vote there in '65?
A If there was an election in '65 and I can't recall.

Q What type of an election are you talking about?

MR. WATKINS:

He didn't say there was any.

MR. BOROWSKI:

I said if there was.

A I have voted in every election that I can recall since I've been a registered voter and my wife has done the same.

Q Then if there was an election you are alluding to the

type of election which would be election of local officers or on a statewide basis, is that correct?

A That would be correct.

Q Prior to your moving to Houma and while you were living in Luling in whose employ were you at that time?

MR. WATKINS:

Immaterial but go ahead.

A Louisiana Power & Light Company.

MR. BOROWSKI:

Q How long have you been employed by Louisiana Power & Light Company?

A Since 1948, approaching 20 years.

Q In what present capacity are you acting now here in Houma?

A As district manager.

Q Was that your title also in Luling?

A Yes, sir, it was.

MR. BOROWSKI:

I have no further questions.

MR. HUPPENBAUER:

I have none.

MR. WATKINS:

Q Is it your custom to vote in every election in which you are allowed to vote?

A Yes.

Q Has this been your practice as well as your custom?

A Yes.

Q Is this the practice of your wife also?

A Yes.

Q Have you so done since you have been a resident of the City of Houma?

A Yes.

Q Have you so done since prior to that time?
A Yes.

MR. WATKINS:

No further questions.

MR. BOROWSKI:

Q If I understood Mr. Watkins correctly you have voted in Terrebonne Parish or the City of Houma since you've been here?
A Yes.

STATE OF LOUISIANA
PARISH OF TERREBONNE

I, Lucile W. Cain, Official Court Reporter for the 17th Judicial District Court, Parishes of Terrebonne and Lafourche, Louisiana, do hereby certify that after he had been duly sworn the witness, MR. JOSEPH Q. CIPRIANO, testified in the above entitled matter on February 29, 1968 in the offices of Messrs. Watkins, Watkins & Walker, Attorneys at Law, Houma, Louisiana, commencing at 11:00 o'clock a. m.; that the testimony of the witness was taken down in shorthand by me and by me reduced to typewritten matter; that the above and foregoing 12 pages constitute a true and faithful transcription of my stenographic notes taken in the above entitled and numbered cause.

I further certify that I am not an attorney, counsel or employee of any of the parties or of any counsel connected with the action, and that I have no financial interest therein.

In Faith, Whereof, Witness my signature hereunto affixed at Houma, Parish of Terrebonne, Louisiana, on this 1st day of March, A. D. 1968.

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[88] [Plaintiff's Exhibits attached]

Mr. and Mrs. Houma:

A 'YES' vote on October 24 will mean

1. Low insurance rates . . .

The city bond issue will allow the city to undertake its five-year program of improvements outlined in previous news releases and prevent Houma from losing its Class 4 fire rating. What will this mean? The chart below, prepared by insurance authorities, indicates that residents will pay more than $230,000 extra each year for fire insurance if the city drops to Class 6 as is expected without the improvements. This would be far more than the funds it will take to retire the $1,620,000 in bonds to be used for waterworks improvements. In addition, your city will have a better water system and our citizens will be safer with better fire protection.

The estimated annual premium reduction or increase to the citizens of Houma with reference to changes in fire insurance rates resulting from specific changes in town protection grading is as follows:

Change in Town Protection Grading	Estimated Effect to Premium Volume
1. From Class 4 to Class 3	$35,000 - $ 40,000 reduction
2. From Class 4 to Class 5	$175,000 - $185,000 increase
3. From Class 4 to Class 6	$230,000 - $245,000 increase

2. Low water rates . . .

The city is presently seeking to equalize all water rates within the city limits, whether this involves acquiring the district's customers, through mutual agreement, or otherwise. The first meeting to discuss this subject is being held this week, on Monday, October 16. We feel that the residents of East Houma should have the same low water rates enjoyed by other residents and businesses.

3. And NO new taxes!

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3. And NO new taxes!

The City of Houma will not and CANNOT add one penny of additional taxation to retire the bond issue to be voted upon October 24. This is a revenue bond issue, to be retired through revenues of the city's utility system which, studies indicate, can easily support it during the coming years.

For a Greater Houma in the years ahead . .

VOTE **YES** ON OCTOBER 24

IN THE

City Utility Revenue Bond Election

Only registered property - owners of the city may vote. If you are one of them, please go to your regular voting precinct on Tuesday, October 24 and vote "Yes".

P-1

'YES' vote on October 24 Will mean

1. Sufficient electrical power in the 1970's

Surveys indicate that by 1970, the city will need an additional source of power. Of the total $10 million bond issue to be voted upon October 24, $5,085,000 will be used to purchase a new 26,000 KW addition to the city's steam generating plant and $715,000 for improvements to its distribution system. The city has reserved a spot in the production line on the generating unit and delivery can be made by 1969, thereby saving several hundred thousand dollars because of a discount offered when the first unit was ordered. If the unit is not ordered now, delivery cannot be made until 1972 and the discount will not be allowed.

2. Additional revenue from city-wide utilities and more support for city services

The utility system of the city provides about 50 per cent of the money for fire and police protection garbage collection, sewer maintenance and other vital services. Much of these ore for areas that are not on the city's utility system. If these services are to continue to grow with the city, we must find additional money to pay for them. The city believes that expansion of its utility coverage is the logical way to do it.

3. Continued low tax rate

The City of Houma is one of 35 cities that own their generating and distributing systems. All of these cities have low tax rates, the City of Houma having the lowest. All of these cities have added to their systems from time to time by bond issues. Cities like Thibodaux, Morgan City, Franklin, Plaquemine, Natchitoches, Lafayette and Alexandria recently passed bond issues for that purpose. In their utility system expansions, Lafayette and Franklin acquired customers of Gulf States and Cleco two private power companies,

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4. And NO new taxes to retire issue

The City of Houma will not and CANNOT add one penny of additional taxation to retire the bond issue to be voted upon October 24. This is a revenue bond issue, to be retired through revenues of the city's utility system which, studies indicate, can easily support it during the coming years.

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City Utility Bond Election

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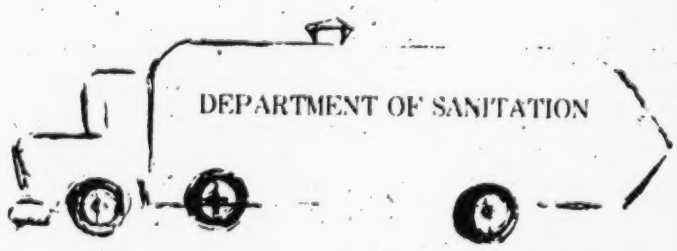
A  **YES** VOTE on OCTOBER 24

will help your city provide the

Police and Fire Protection, Garbage Collections and other vital services it must have!



Your city's utility system pays for half of these services! Only with a continued growth in that system can we afford to support them in our growing city with a minimum of taxation. A "yes" vote on October 24 will allow your city to expand its utility system and provide modern, up-to-date services for our residents and businesses.





VOTE  **YES** ON OCTOBER 24

in the

City Utility Bond Election

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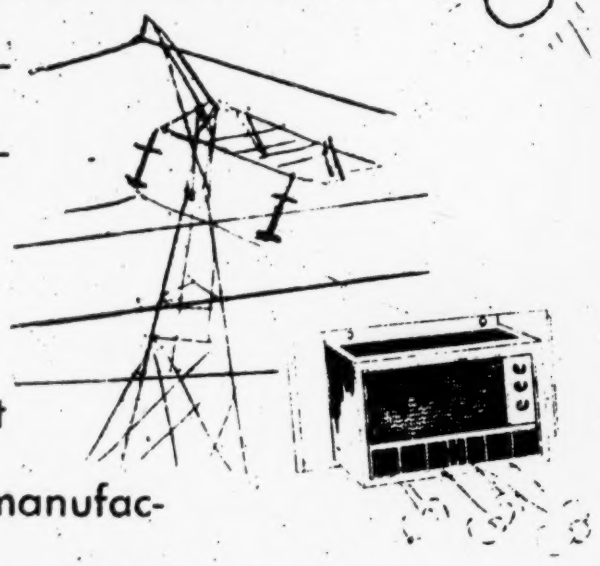
A ☑ **YES** VOTE on OCTOBER 24

will allow

Houma to meet the electrical demands of the 1970's!

Surveys indicate that by 1970, your city will need an additional source of power. Of the total $10 million bond issue to be voted upon October 24, $5,085,000 will be used to purchase a new 26,000 KW addition to the city's steam electric generating plant. If the order is placed soon, delivery of such a unit can be made by 1969 and at a discount due to an agreement made by the manufacturer when the city purchased its last unit. A "yes" vote on October 24 will allow your city to meet the electrical demands of 1970's.







VOTE ☑ **YES** ON OCTOBER 24

in the

City Utility Bond Election

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Mr. and Mrs. Houma:

A 'YES' vote on October 24 will mean

1. Low insurance rates . . .

The city bond issue will allow the city to undertake its five-year program of improvements outlined in previous news releases and prevent Houma from losing its Class 4 fire rating. What will this mean? The chart below, prepared by insurance authorities, indicates that residents will pay more than $230,000 extra each year for fire insurance if the city drops to Class 6 as is expected without the improvements. This would be far more than the funds it will take to retire the $1,620,000 in bonds to be used for waterworks improvements. In addition, your city will have a better water system and our citizens will be safer with better fire protection.

The estimated annual premium reduction or increase to the citizens of Houma with reference to changes in fire insurance rates resulting from specific changes in town protection grading is as follows:

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The city is presently seeking to equalize all water rates within the city limits, whether this involves acquiring the district's customers, through mutual agreement, or otherwise. The first meeting to discuss this subject is being held this week, on Monday, October 16. We feel that the residents of East Houma should have the same low water rates enjoyed by other residents and businesses.

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For a Greater Houma in the years ahead . .

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IN THE

City Utility Revenue Bond Election

Only registered property - owners of the city may vote. If you are one of them, please go to your regular voting precinct on Tuesday, October 24 and vote "Yes".

Mr. & Mrs. Houma

The future of your city and its utility system will be greatly affected by what you do on October 24

Read These Facts Before You Vote on the UTILITY BOND ISSUE

1. Your city must order a 26,000 KW steam turbine now in order to have it delivered and installed in time to meet the electrical demands of the 1970's in the area it now covers.
2. By ordering this unit now, WE WILL SAVE SEVERAL HUNDRED THOUSAND DOLLARS because of an agreement from the manufacturer to allow us a discount if this second unit is purchased within a certain period of time.
3. This unit can be purchased and paid for through revenues derived from our present customers at NO INCREASE IN ELECTRIC RATES or TAXES. Exhibit C proves this.
4. Our opponent in this election, Louisiana Power and Light Co., would prefer us not to pass this issue and purchase our firm power from them. How long do you think we could stay in the electrical business with such an arrangement? If this were to happen, the services your city provides from revenues of our utility system -- such as police and fire protection and garbage collections -- would suffer seriously and, in that case, we would have to provide additional funds through other means.
5. The City of Houma is one of 35 cities that own their generating and distribution systems. All of these cities have low tax rates, with the City of Houma having the lowest.
6. Remember Hurricane Betsy? Electricity was restored to all City of Houma customers within 2½ days. Louisiana Power and Light customers were without electricity many times longer. Do you want LP&L to provide your electrical power?
7. Louisiana Power and Light Co. claims that we already have been authorized to issue $4 million in bonds that can be used for electrical improve-

EXHIBIT A

LOUISIANA POWER & LIGHT POSITION
ON POWER PLANT EXPANSION

Louisiana Power & Light		
City Total Generating Capacity Today		39,000 KW
City Largest Single Unit		13,000 KW
City Total Firm Power		26,000 KW
Barnard & Burk Projected Peak Load in 1968		27,000 KW
Extra Power Requirement: 27,000 - 26,000	=	1,000 KW
1978 Power Requirement		6,000 KW

CITY OF HOUMA POSITION
ON POWER PLANT EXPANSION

City of Houma		
We agree Power Above Firm Power	=	1,000 KW
1978 Projected Load by Barnard & Burk is	42,000 KW	
Firm Power Today with Tie	32,000 KW	
Firm Power Requirement 1978 City		10,000 KW
L. P. & L. says above this will be the Difference		6,000 KW 4,000 KW

L. P. & L. uses Barnard & Burk report and so does the City. Why the difference?

CITY PROPOSAL IN OCT. 24 BOND ELECTION

Total Generating Capacity Today	39,000 KW
Add from Bond Election	26,000 KW
Total	65,000 KW
Firm Power Minus Largest Unit	26,000 KW
Total Firm Power	39,000 KW
Barnard & Burk Projected 1978 Demand	42,000 KW
Firm Power Requirement	3,000 KW

All without adding customers of others and without a penny tax

provide your electrical power?

7. Louisiana Power and Light Co. claims that we already have been authorized to issue $4 million in bonds that can be used for electrical improvements. This is not true. They are referring to the unused $2½ million authorized when we purchased the first steam turbine unit and $1½ million unissued from the Sales Tax Bond Issue. But the latter amount was dedicated when voted upon to fire service, police complex, recreation and drainage, as indicated in exhibit B, and cannot be used for the electrical utility system.
8. Louisiana Power and Light Co. uses the Barnard and Burk Engineering Co. figures for all of its conclusions except in determining the city's projected extra power requirements in 1978. LP&L claims that power need will be only 6,000 KW per day whereas Barnard and Burk's figures estimate this at 10,000 KW daily (as shown in Exhibit A).
9. Louisiana Power and Light Co. is quick to point out that the city's increased debt service over a 10-year period will be $3,341,859 if it purchases the 26,000-kilowatt unit but fails to note THAT PROFITS FROM EXTRA CUSTOMERS THAT THIS UNIT COULD SERVE WOULD BE FAR GREATER.
10. The City of Houma is spending some $400,000 yearly to provide services to the East Houma area -- $36,000 of which is paid directly to Louisiana Power and Light for lighting streets, parks, etc. We are getting very little in return from residents of East Houma because they are not on the city's electrical utility system, which provides money for these services.
11. Passage of the city bond issue will allow the city to undertake its five-year program of improvements outlined in previous news releases and prevent Houma from losing its Class 4 fire rating. This will mean insurance premiums paid by Houma residents each year will be at least $230,000 less than if the city dropped to Class 6 fire rating, which is expected if the improvements are not made.

For a greater Houma in years ahead ...

VOTE ✓ YES

TUESDAY

in the

All without taxing customers or others and without a penny tax

EXHIBIT B

October 24, Bond Election

Total Bonds to be issued		$10,000,000.00
Water Lines	$1,620,000.00	
26,000 KW Generator	5,085,000.00	
Distribution System	715,000.00	
Balance		7,420,000.00
		$2,580,000.00

Sales Tax Election Bond Authority

Issued as dedicated	$3,380,000.00	
Un issued & dedicated for		
Fire Service	275,000.00	
Police Complex	375,000.00	
Recreation	575,000.00	
Drainage	450,000.00	
Total	$4,775,000.00	
Available for Water or Electric Utility		NONE
1965 Power Plant Bond Issue	$6,890,000.00	
Issued for New Steam Plant and Distribution System	4,320,000.00	
Unissued		$2,570,000.00
Total in Reserve Authority		$5,150,000.00

FINANCING PROGRAM

Bonds to be issued out of $10,000,000.00 Election

Water Lines	$1,620,000.00	
26,000KW Generator	5,085,000.00	
Distribution System	715,000.00	
Total		$7,420,000.00
New Customers Required		**NONE**
Taxes Required		**NONE**
Rate Increase Planned		**NONE**
Taxpayer Cost		**NONE**
Financed with present income		$7,420,000.00

CUSTOMER ACQUISITION

Reserve Bond Authority Above	$5,150,000.00
To be issued	UNKNOWN
Financed out of profits from customers acquired	ALL ISSUED
Taxes Required	NONE

RESULTS

Some Lower Rates Will Result for Some Houma, Citizens
Additional Revenue will go to the City General Fund
Continued Progress for The City of Houma
ALL WITHOUT A PENNEY TAX INCREASE

Exhibit B shows the breakdown on the proposed $10 million bond issue and the past sales tax and power plant bond issues. Of the total $10 million, $7,420,000 will be issued for utility improvements and purchase of a new generator and $2,580,000 will be held in reserve with the $2,570,000 authorized in the previous election for acquisition of new utility service areas.

EXHIBIT C

SCHEDULE "C"

CITY OF HOUMA, STATE OF LOUISIANA

FLOW OF FUNDS SCHEDULE FOR UTILITIES REVENUE BONDS ASSUMING ISSUANCE OF $7,420,000 OF BONDS SHOWN ON SCHEDULE "B"

PREPARED BY
COX, BAGOT & HUPPENBAUER
Bond Attorneys
And
BARNARD AND BURK, INC.
Consulting Engineers

Fiscal Year Ending Sept. 30th	Net Income Available for Debt Service	Earnings Required to pay bonds (See Schedule "B")	Reserve Fund Payments*	Capital Additions and Contingencies Fund Payments	Available to General Fund
1967	$1,729,100.00	$ 645,395.57	$ 60,000.00	$ 134,269.00	$ 889,435.43
1968	1,857,700.00	825,612.50	102,000.00	148,570.00	787,017.50
1969	1,950,400.00	915,337.50	102,000.00	149,475.00	783,587.50
1970	2,046,500.00	1,017,231.25	102,000.00	156,570.00	770,698.75
1971	2,142,600.00	1,047,700.00	102,000.00	163,690.00	829,210.00
1972	2,239,900.00	1,049,693.75	84,055.00	170,940.00	935,211.25
1973	2,331,600.00	1,051,187.50		177,870.00	1,102,542.50

9. **Louisiana Power and Light Co. is quick to point out that the city's increased debt service over a 10-year period will be $3,341,859 if it purchases the 26,000-kilowatt unit but fails to note THAT PROFITS FROM EXTRA CUSTOMERS THAT THIS UNIT COULD SERVE WOULD BE FAR GREATER.**

10. **The City of Houma is spending some $400,000 yearly to provide services to the East Houma area -- $36,000 of which is paid directly to Louisiana Power and Light for lighting streets, parks, etc. We are getting very little in return from residents of East Houma because they are not on the city's electrical utility system, which provides money for these services.**

11. **Passage of the city bond issue will allow the city to undertake its five-year program of improvements outlined in previous news releases and prevent Houma from losing its Class 4 fire rating. This will mean insurance premiums paid by Houma residents each year will be at least $230,000 less than if the city dropped to Class 6 fire rating, which is expected if the improvements are not made.**

For a greater Houma in years ahead ...

VOTE ✓ YES

TUESDAY
in the
City Utility
Bond Issue

9,6

Only registered property - owners of the city may vote. If you are one of them, please go to your regular voting precinct on Tuesday, October 24 and vote "Yes".

and Distribution System	4,320,000.00	
Unissued		$2,570,000.00
Total in Reserve Authority		$5,150,000.00

FINANCING PROGRAM

Bonds to be issued out of $10,000,000.00 Election		
Water Lines	$1,620,000.00	
26,000KW Generator	5,085,000.00	
Distribution System	715,000.00	
Total		$7,420,000.00
New Customers Required		**NONE**
Taxes Required		**NONE**
Rate Increase Planned		**NONE**
Taxpayer Cost		**NONE**
Financed with present income		$7,420,000.00

CUSTOMER ACQUISITION

Reserve Bond Authority Above	$5,150,000.00
To be issued	UNKNOWN
Financed out of profits from customers acquired	ALL ISSUED
Taxes Required	NONE

RESULTS

Some Lower Rates Will Result for Some Houma Citizens
Additional Revenue will go to the City General Fund
Continued Progress for The City of Houma
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Exhibit B shows the breakdown on the proposed $10 million bond issue and the past sales tax and power plant bond issues. Of the total $10 million, $7,420,000 will be issued for utility improvements and purchase of a new generator and $2,580,000 will be held in reserve with the $2,570,000 authorized in the previous election for acquisition of new utility service areas.

EXHIBIT C

SCHEDULE "C"

CITY OF HOUMA, STATE OF LOUISIANA

FLOW OF FUNDS SCHEDULE FOR UTILITIES REVENUE BONDS ASSUMING
ISSUANCE OF $7,420,000 OF BONDS SHOWN ON SCHEDULE "B"

PREPARED BY
COX, BAGOT & HUPPENBAUER
Bond Attorneys
And
BARNARD AND BURK, INC.
Consulting Engineers

Fiscal Year Ending Sept. 30th	Net Income Available for Debt Service	Earnings Required to pay bonds (See Schedule "B")	Reserve Fund Payments*	Capital Additions and Contingencies Fund Payments	Available to General Fund
1967	$1,729,100.00	$ 645,395.57	$ 60,000.00	$ 134,265.00	$ 839,435.43
1968	1,857,700.00	825,612.50	102,000.00	148,570.00	781,017.50
1969	1,950,400.00	915,337.50	102,000.00	149,475.00	783,587.50
1970	2,046,500.00	1,017,231.25	102,000.00	156,570.00	770,698.75
1971	2,142,600.00	1,047,700.00	102,000.00	183,690.00	809,210.00
1972	2,239,980.00	1,049,693.75	84,055.00	170,940.00	935,211.25
1973	2,331,600.00	1,051,187.50		177,870.00	1,102,542.50

Figure Increases

SCHEDULE "B"

CITY OF HOUMA, STATE OF LOUISIANA

SCHEDULE OF OUTSTANDING AND PROPOSED DEBT AND NET PAYMENTS FROM UTILITIES REVENUES

Bond Year Ending April 1st	Debt Service on Outstanding Bonds	$7,420,000.00 of Proposed Utilities Revenue Bonds, Dated 4/1/68 Interest at 4.27% Prin. 4/1	Int. 10/1 & 4/1	Total	Total Debt Service on Outstanding and Proposed Bonds	Payments Required for Fiscal Year Ending 9/30	Earnings on Investment of Bond Proceeds	Net Payments from Utilities Revenue for Fiscal Year Ending 9/30
1967	$ 603,791.14				$ 607,791.14	$ 645,395.57		$ 645,395.57
1968	683,000.00				683,000.00	827,487.50		825,612.50
1969	690,975.00		$ 371,000.00*	$ 371,000.00	1,061,975.00	1,060,587.50	$ 46,075.00	915,337.50
1970	688,200.00		371,000.00*	371,000.00	1,059,200.00	1,058,231.25	145,250.00	1,017,231.25
1971	784,912.50	$ 5,000	315,350.00	320,350.00	1,045,262.50	1,047,700.00	33,000.00	1,067,700.00
1972	730,000.00	5,000	315,137.50	320,137.50	1,050,137.50	1,049,693.75		1,049,693.75
1973	729,325.00	5,000	314,925.00	319,925.00	1,049,250.00	1,051,187.50		1,051,187.50

Continuous Average

Exhibit C shows that revenue from the city's utility system will be more than ample to retire all utility bonds after the proposed $7,420,000 of bonds are issued for improvement to the city's utility system (compare column 3 with column 2 in Schedule "C"). These figures are based on expected growth in the city's present utility coverage area.

Mr. and Mrs. Houma:



This is your city. You have one of the lowest tax rates in the nation. Fire insurance on your home is also at a low rate.

Electrical and water rates in areas supplied by your city are as low as any. And yet they provide enough profits to support half of the general services of your city, such as police and fire protection and garbage collections.

You mayor and board of aldermen have proposed a bond issue that will help keep it that way and provide more revenues for city services in our growing city.

The only utility company opposing this bond issue is Louisiana Power and Light Co. LESS THAN 3% of the ownership of this corporation lives in Louisiana, Mississippi and Arkansas - - the area it serves.

Do you think they're interested in YOUR city?

Vote for a strong city utility system and a greater Houma in the years ahead!

VOTE **YES** TODAY (TUESDAY) IN THE

City Utility Revenue Bond Issue Election



This is your city. You have one of the lowest tax rates in the nation. Fire insurance on your home is also at a low rate.

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City Utility Revenue Bond Issue Election

U. S. District Court
Eastern District of Louisiana
Filed Mar 28 1968
A. Dallam O'Brien, Jr.
Clerk
B

[91] UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

CIVIL ACTION

No. 67-1853

SECTION "C"

JOSEPH Q. CIPRIANO

VS.

CITY OF HOUMA,
G. LESLIE BROUSSARD, Mayor,
CHRISTIAN L. OLIVIER, CHARLES DAVIDSON,
PETER BOURGEOIS, JR., SAMUEL LUSCO and
WILBERT P. BONVILLIAN

MOTION TO INTERVENE AS A DEFENDANT

Now into court comes the State of Louisiana through its Governor, John J. MeKeithen, represented by Jack P. F. Gremillion, Attorney General for the State of Louisiana and otherundersigned counsel, who move the court for an order permitting him to intervene in this cause, and to adopt the defense set forth by the City of Houma, and its individual officials, in their answer.

This cause attacks the constitutionality of certain statutes of the State of Louisiana and pursuant to 28 USC

2284, the Governor and Attorney General of the State of Louisiana are entitled to at least five days' notice of a hearing involving constitutionality of a state statute; however, this delay is hereby waived so that the cause may proceed as presently scheduled.

WHEREFORE, applicant for intervention prays that his application for intervention be allowed, and that after due proceedings held herein that there be judgment sustaining the validity of the state statutes and laws in question, rejecting the demand of the petitioner at his cost.

Respectfully submitted on behalf
of the State of Louisiana through
John J. McKeithen, its Governor,

by: /s/JACK P. F. GREMILLION
JACK P. F. GREMILLION
ATTORNEY GENERAL,
STATE OF LOUISIANA
P. O. Box 44005
Baton Rouge, Louisiana

/s/ WILLIAM V. REDMANN
WILLIAM V. REDMANN
EXECUTIVE COUNSEL
TO THE GOVERNOR
Baton Rouge, Louisiana

[92]

/s/ KENNETH C. DEJEAN
KENNETH C. DEJEAN
(Trial Attorney)
SPECIAL COUNSEL
TO THE ATTORNEY GENERAL
P. O. Box 44005
Baton Rouge, Louisiana
(Phone 389-6761)

CERTIFICATE

I hereby certify that prior to the filing of this motion a copy of said motion was served upon counsel for complainant by handing them a copy of said motion.

New Orleans, Louisiana
March 28, 1968

by: /s/ KENNETH C. DEJEAN
OF COUNSEL

U. S. District Court
Eastern District of Louisiana
Filed Mar 28 1968
A. Dallam O'Brien, Jr.
Clerk
B

[93] UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

CIVIL ACTION
No. 67-1853

JOSEPH Q. CIPRIANO,
Plaintiff

VS.

CITY OF HOUMA, ET AL,
Defendant

PETITION FOR PERMISSION TO FILE BRIEF AS AMICUS CURIAE

The petition of the Louisiana Municipal Association, a non-profit corporation consisting of and representing two hundred sixty-three (263) municipalities in the State

of Louisiana, herein represented by undersigned counsel, respectfully represents that:

I.

This litigation attacks the validity of proceedings with respect to the issuance of utility revenue bonds by the City of Houma, pursuant to the provisions of Article 14, Section 14 (a) of the Louisiana Constitution, and Louisiana Revised Statutes, Title 39, Section 508 and Title 33, Section 4258, respectively, it being contended that the plaintiff, a non-property taxpayer voter of the City of Houma, was deprived of certain constitutional rights by virtue of not being permitted to vote in said election under the constitutional and statutory provisions aforesaid.

II.

Any adverse decision on this important question of law would have far-reaching effect and would particularly affect the economy, full faith and credit, and the capability of municipalities to provide necessary public utility service for their inhabitants and to this extent, the Louisiana Municipal Association, as a representative of the Louisiana municipalities, has an interest in this litigation.

III.

For the reasons hereinabove set forth, the Louisiana Municipal Association should be permitted the opportunity to appear herein and file an appropriate brief before any final determination of the legal issue raised by these proceedings is rendered by this Honorable Court.

[94] IV.

Petitioner therefore desires to file a brief amicus curiae in support of the position of the City of Houma,

defendant in these proceedings, and on behalf of the Louisiana municipalities which will be affected by any decision rendered herein.

WHEREFORE, petitioner prays that it be permitted to file this petition herein and to thereafter file a brief as amicus curiae in support of the position of the City of Houma, defendant in these proceedings, and to have such time to file such brief amicus curiae as may be allowed other parties to these proceedings within which to file briefs in support of their respective positions.

Petitioner further prays for all orders and decrees necessary in the premises and for all general and equitable relief.

Respectfully submitted:

By Attorney:

/s/ R. GORDEN KEAN, JR.
R. Gordon Kean, Jr., of
Sanders, Miller, Downing & Kean
Post Office Box 1588
Baton Rouge, Louisiana 70821

CERTIFICATE

I, undersigned counsel for petitioner, Louisiana Municipal Association, do hereby certify that a copy of the foregoing petition has been served on all counsel in this matter by handing same to them this date.

New Orleans, Louisiana, this 28th day of March, 1968.

/s/ R. GORDON KEAN, JR.
R. Gordon Kean, Jr.

[95] ORDER

IT IS ORDERED by the Court that petitioner, Louisiana Municipal Association, be permitted to file a brief

amicus curiae in this matter in support of the position of the City of Houma, defendant herein, and that said brief be filed within the time allowed counsel for other parties of record to file briefs herein.

New Orleans, Louisiana, this ..... day of March, 1968.

DISTRICT JUDGE

DISTRICT JUDGE

JUDGE
Court of Appeals, Fifth Circuit

Apr 8 1968

[96] MINUTE ENTRY:
MARCH 28, 1968
WISDOM, J.
RUBIN, J.
COMISKEY, J.

JOSEPH Q. CIPRIANO

versus

CITY OF HOUMA, et al

SECTION "C"

No. 67-1853

CIVIL ACTION

This cause came on this day for trial without intervention by jury.

PRESENT: Kenneth T. Watkins, Esq.
Louis Watkins, Jr., Esq.
James C. Walker, Jr., Esq.
Attorneys for Plaintiff

Kenneth DeJean, Esq.
R. Gordon Kean, Esq.
E. E. Huppenbauer, Jr., Esq.
Ted J. Borowski, Esq.
Attorneys for Defendants

All present and ready.

Mr. Kean files petition for permission to file brief as Amicus Curiae.

Mr. DeJean files motion to intervene as a Defendant.

The following witness called on behalf of plaintiff to testify:

Joseph Q. Cipriano, Sworn by Deputy Clerk.

The above witness called under cross-examination by the Defendant.

Argument.

Rebuttal.

Counsel for plaintiff is given ten days in which to file supplemental briefs and Counsel for defendants are given five days thereafter in which to file reply briefs.

SUBMITTED.

[97-98]

Filed
U. S. District Court
Eastern District of La.
Apr 19, 4:15 PM '68
A. Dallam O'Brien, Jr.
Clerk
B

Apr 24 1968
4/27/68 H

[99] UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

CIVIL ACTION
No. 67-1853
SECTION "C"

JOSEPH Q. CIPRIANO
Plaintiff

VS.

CITY OF HOUMA, ET AL.
Defendant

PETITION FOR PERMISSION TO FILE BRIEF AS AMICUS CURIAE

The petition of the Louisiana Security Dealers Association, Inc., a non-profit corporation, which represents, and whose membership includes, fifteen (15) Louisiana Securities Dealers, represented herein by undersigned counsel, respectfully represents that:

I.

The Plaintiff in this matter seeks to have this Honorable Court declare certain Louisiana Statutes relating to

the authorization, issuance and sale of utility revenue bonds to be unconstitutional under the provisions of the United States Constitution.

II.

A decision of this Honorable Court adverse to the Defendants in this matter would have serious detrimental effects upon the marketability of and demand for utility revenue bonds, both outstanding and proposed, of the various municipalities and other political subdivisions of the State of Louisiana.

III.

On the basis of the factors set forth hereinabove, the Louisiana Security Dealers Association, Inc., does hereby request that it be permitted by this Honorable Court to file a brief amicus curiae in support of the Defendants herein, and on behalf of the Louisiana Security Dealers who will be directly affected by decision of this Court in this matter.

WHEREFORE, Petitioner prays that it be permitted to file this petition in this matter and to file a brief as amicus curiae herein.

[100] Petitioner further prays for all orders and decrees necessary in the premises and for all general and equitable relief.

Respectfully submitted,

/s/ KENNETH W. FORD
Kenneth W. Ford
Foley, Judell & Morel
Suite 2313, 225 Baronne Street
New Orleans, Louisiana 70112
Telephone 524-8788
Attorneys for Petitioner,
Louisiana Security Dealers
Association, Inc.

Considering the foregoing, it is ordered that/the Louisiana Security Dealers Association, Inc. be permitted to file a brief as Amicus Curiae herein, provided such brief is filed not later than May 1, 1968.

New Orleans, Louisiana, this 22nd day of April, 1968.

/s/ ALVIN B. RUBIN
JUDGE

E. E. Huppenbauer √
Ted J. Borowski √
Jack P. T. Gremillion √
Kenneth T. Watkins √

[101] CERTIFICATE

I do hereby certify that a copy of the above and foregoing brief amicus curiae has been served upon all counsel of record by mailing same to each of them at their respective offices on the 19th day of April, 1968, postage prepaid.

New Orleans, Louisiana, this 19th day of April, 1968.

/s/ KENNETH W. FORD
Kenneth W. Ford
Foley, Judell & Morel
Attorneys for Louisiana Security
Dealers Association, Inc.
Suite 2313, 225 Baronne Street
New Orleans, Louisiana, 70112
Telephone 524-8788

Filed
U. S. District Court
Eastern District of La.
Jul 15, 4:38 P.M. '68
A. Dallam O'Brien, Jr.
Clerk
B

Jul 16 1968
7/16/68 H

[102] UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

CIVIL ACTION

No. 67-1853

SECTION "C"

JOSEPH Q. CIPRIANO

Plaintiff

versus

CITY OF HOUMA,
G. LESLIE BROUSSARD, Mayor,
CHRISTIAN L. OLIVIER, CHARLES DAVIDSON,
PETER BOURGEOIS, JR., SAMUEL LUSCO and
WILBERT P. BONVILLIAN

Defendants

Kenneth T. Watkins, Esq.
Louis Watkins, Jr., Esq.
James C. Walker, Jr., Esq.
Attorneys for Plaintiff
Kenneth C. De Jean, Esq.
Special Counsel to Attorney General, Intervenor.
R. Gordon Kean, Jr., Esq.
Attorney for Louisiana Municipal Association,
Amicus Curiae.
E. E. Huppenbauer, Jr., Esq.
Ted J. Borowski, Esq.
Attorneys for Defendants

Before JOHN MINOR WISDOM, Circuit Judge, and ALVIN B. RUBIN and JAMES A. COMISKEY, District Judges.

ALVIN B. RUBIN, District Judge:

A resident of the City of Houma, Louisiana, has brought a class action seeking an injunction to prevent the City from issuing utility revenue bonds approved by a vote of the property taxpayers at a special election. In addition, he seeks a judgment declaring that the provisions of Louisiana law under which the election was held violate the federal constitution. The plaintiff is a qualified voter, but not a property owner. He contends that he and the other members of the class of resident voters who do not own property in Houma have a proprietary interest in the municipal utility properties and that, since the Louisiana constitution and statutes permit only qualified resident voters who are property owners to participate in the election, they have been denied due process and equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

[103] The Louisiana constitution imposes limitations on the amount of debt a municipality may incur.[1] But in Louisiana, as in other states, these limitations apply only to debt that constitutes a general obligation of the municipality; debt that is a charge only on a special fund is not subject to the limitation.[2] Article XIV, Section M, of the Louisiana Constitution is typical of the provisions relative to such special funds: it provides that the legislature may authorize municipal corporations to issue bonds for the purpose of constructing, acquiring, extending, or improving any revenue producing public utility if the bonds are secured exclusively by a mortgage on the assets of the utility system and a pledge of its revenues, but that these

bonds may not be a charge on the other public income and revenues of the municipality.[3]

Acting under this authority, the Louisiana legislature empowered municipal corporations to issue public utility revenue bonds for the purposes permitted by the constitutional provision.[4] The bonds must be authorized by a resolution of the municipal governing body.[5] As the Louisiana constitution requires, they must be payable solely from the revenues of operating the utility system, and they may not constitute an indebtedness or pledge of the general credit of the municipality.[6] Before the resolution authorizing the issuance of bonds may be adopted by the governing body, the question whether the bonds should be issued must be submitted to and approved by the votes of a majority in number and amount of the property taxpayers.[7]

The procedure contemplated by the Louisiana statutes was followed by the City of Houma. The Mayor and Board of Aldermen, the duly elected municipal governing body, adopted a resolution calling a special election. The election was held, and the bond issue was approved. The City applied to the State Bond and Tax Board for consent and authority to issue and sell the bonds.[8] Before they can be sold, it will be necessary for the municipal governing body to adopt a resolution for the issuance and sale of the bonds.[9]

[104] While the plaintiff contends he was denied due process of law, he does not seriously press the claim. His real complaint is denial of equal protection of the laws, and he relies entirely upon Harper v. Virginia State Board of Elections, 1966, 383 U.S. 663. In *Harper* the United States Supreme Court held that the Equal Protection Clause of the Fourteenth Amendment prevents a state from exacting a poll tax as a condition of the right to vote in state elections. Mr. Justice Douglas reasoned that, "[O]nce the

franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment." Id. at 665. A state "violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence if the voter or payment of any fee an electoral standard." Id. at 666.

But this sweeping proposition is not decisive here. The Equal Protection Clause does not command state legislatures to make their laws conform to hydraulic principles by seeking the common—and lowest—level. "Equal protection does not require identity of treatment. It only requires that classification rest on real and not feigned differences, that the distinction have some relevance to the purpose for which the classification is made, and that the different treatments be not so disparate, relative to the difference in classification, as to be wholly arbitrary." Walters v. City of St. Louis, 1954, 347 U.S. 231, 237. In considering whether a classification rests on a real difference, we must take into account the nature and the relative importance of the subject with respect to which equality is asserted. "Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized." Reynolds v. Sims, 1964, 377 U.S. 533, 561-562.

But "the Equal Protection Clause is not shackled to the political theory of a particular era."[10] not even the one [105] in vogue at present. It does not forbid the states to fix voter qualifications; it only, as *Harper* puts it, prevents them "from fixing voter qualifications which invidiously discriminate."[11] For "[t]here can be no doubt either of the historic function of the States to establish, on a non-

discriminatory basis, and in accordance with the Constitution, other qualifications [than residence] for the exercise of the franchise."[12] *Harper* holds merely that equal protection is denied when a state levies a poll tax. It does not declare that the Fourteenth Amendment abrogates the power of the states to classify voters.

Mere classification does not of itself deprive a group of equal protection.[13] Older decisions taught us that legislation that differentiates between two classes is unconstitutional only if the discrimination is irrational, arbitrary or capricious.[14] Only a few weeks ago, the Supreme Court indicated that these principles are still vital. In holding that the one man, one vote principal of *Reynolds v. Sims* was applicable to the selection of Texas County Commissioners it said, "The Equal Protection Clause does not, of course, require that the State never distinguish between citizens, but only that the distinctions that are made not be arbitrary or inviduous." Avery v. Midland County Texas, 36 U.S.L.W. 4257 (U.S. April 1, 1968), ... U.S. .....[15]

Unlike the poll tax rejected in *Harper*, the Louisiana statute attacked here does not limit suffrage in an election held to vote for political representatives or general governmental purposes. It deals solely with a vote on the issuance of municipal revenue bonds. The test to be applied is whether the distinction drawn between resident voters who are property owners and resident voters who do not own property is so arbitrary or invidious as to deny equal protection of the laws to the resident who does not own property. This can not be settled by resort to generalizations that would apply the same criteria to every ballot on every subject just because it is a ballot. Whether the distinction is invidious depends on the exact factual situation presented.

[106] Before a utility revenue bond can be issued under the Louisiana constitutional and statutory plan, the prop-

erty owners election must be authorized by an elected governmental body. The plaintiff has full suffrage in the election of this municipal governing body, as well as in the election of the Louisiana legislature. The property owners election called by the municipal governing body can only approve or disapprove the issuance of bonds. If it disapproves, its veto is decisive. But even if it approves, the municipal governing body has the final decision on whether the bonds should be issued.[16]

The election to approve the issuance of the bonds is not an election for general governmental purposes. It concerns the administrative functions of the municipality. This type of distinction has been considered important in determining what is required to afford equal protection to voters. See Sailors v. Board of Education of County of Kent, 1967, 387 U.S. 105.

The question here is not whether all voters resident in a municipality are equally qualified to vote on the issuance of utility bonds, nor whether they are all equally concerned with municipal utility services, nor whether they pay utility bills just like property owners, nor whether the people of Louisiana in adopting their Constitution or the legislature of Louisiana in enacting its statutes have acted wisely in determining that only property owners can veto the issuance of revenue bonds. It is whether Louisiana's plan of governmental action is arbitrary or invidious with respect to the resident voter who owns no property. In deciding how they would authorize revenue bonds to be issued, Louisianians might have supposed, perhaps erroneously but without being irrational, that property owners by and large have a greater and more permanent economic stake in the community than non-property owners; that the values of property might be more directly affected by the quality and cost of utility service; that the success of a

municipal utility system might yield funds for general municipal operation, relieving property owners of some of the burden otherwise borne by ad valorem taxes, while the [107] failure of such a system might impair the credit of the municipality even though the bondholders have no claim to its funds. They might have recalled that in many cases the cost of installing utility services have been directly borne by subdividers of property.[17] They might have thought that property owners could better take into account such questions involved in utility operation as valuation of property, acquisition of rights of way, and durability of construction. In all of these matters, their conclusion might be different from the ones we ourselves would reach, and the conclusion might be one that cannot be scientifically established or proved by a preponderance of the evidence. But the question is not whether they are right, but merely whether they are so wrong as to be irrational.

As *Sailors* recognized, "Viable local governments may need many innovations, numerous combinations of old and new devices, great flexibility in municipal arrangements to meet changing urban conditions. We see nothing in the Constitution to prevent experimentation." 387 U.S. at 110-111.

There is no one light to kindle in state and municipal fiscal matters. Indeed, beset as state and local governments are by financial problems,[18] it may be that the gloom is impenentrable. But the legislatures of some states think that giving property owners the right to veto the issuance of revenue bonds serves as a wise fiscal restraint.[19] We cannot say that this conclusion is based on a distinction betweeen those who own property and those who do not that is irrational, arbitrary or invidious. Those who, like the plaintiff, consider the Louisiana legislative provisions

unwise have their general franchise unimpaired; they may seek to elect representatives who will vote for what they consider a better method of authorizing the issuance of revenue bonds.

In Kramer v. Union Free School District No. 15, 2 Cir., 1967, 379 F.2d 491, Judges Kaufman and Hays held that a three-judge court should be convened to hear a case in which a bachelor who was not a property owner contended that he was deprived of equal protection by a New York statute that permitted only property owners, parents [108] of students or persons who stood in loco parentis to students to vote in school board elections. Judge Lumbard considered the claim "so patently without any merit" that he dissented. In doing so he observed:

> ". . . [T]he franchise in local elections concerning, for example, water supply, sanitation removal, fire protection, and the operation of parks and schools is very commonly limited to those who use and/or pay for the services. And such limitations have a readily apparent and rational basis, the greater concern and awareness of those who use and pay for such services, for which there is no analogue when voting in a statewide legislative election is conditioned upon payment of a poll tax." 379 F.2d at 497 (footnote omitted).

And he commented further,

> "[T]he salient vice of a restriction upon voting in statewide elections is that it tends to perpetuate itself by denying those it disadvantages any opportunity to remove it through democratic processes. See The Supreme Court, 1965 Term, 80 Harv.L.Rev. 91, 180 n. 23 (1966). By contrast, plaintiff can seek to have his exclusion from the school district franchise repealed by the New York legislature, for which his vote is unimpaired." *Ibid.*

Even when considering whether a state statute prohibiting the sale of obscene publications to juveniles im-

pairs the right to free speech, the test of validity is not whether judges agree with state legislatures or whether the legislative findings express "an accepted scientific fact." For "[t]o sustain state power to exclude material defined as obscenity . . . requires only that we be able to say that it was not irrational for the legislature to find that exposure to material condemned by the statute is harmful to minors." Ginsberg v. New York, 36 U.S.L.W. 4295 (U.S. April 22, 1968), ... U.S. ...... "We do not demand of legislatures a 'scientifically certain criteria of legislation.' " *Ibid.*

If the federal system is to continue, the states must be free, within the limits of rationality, to adopt their own solutions to their own problems, to experiment even if their experiments sometimes fail. The courts are not a collective omniscent father who always knows best. The Constitution ordains a rule of reason, not a strait jacket of egalitarianism. It must allow that latitude that is essential to the [109] experimentation, development and change needed by a nation composed of fifty different states and thousands of state-created political subdivisions. The measures adopted by Louisiana to meet its own notions of how its people should determine the desirability of issuing public utility revenue bonds are neither so arbitrary or irrational as to bring down the stricture of the Fourteenth Amendment. Judgment will therefore be entered for the defendant.

UNITED STATES CIRCUIT JUDGE

/s/ ALVIN B. RUBIN
UNITED STATES DISTRICT JUDGE

/s/ JAMES A. COMISKEY
UNITED STATES DISTRICT JUDGE

New Orleans, Louisiana.
July 15th, 1968.

[1] LSA-Const. Art. 14, § 14(f).

[2] The provisions limiting municipal indebtedness had their origin in the latter half of the 19th Century. Seeking to attract railroads, communities issued bonds and bought railroad stock with the proceeds. The depression of the 1870's rendered most of the stock worthless. Corrupt municipal administration also resulted in indiscriminate issuance of bonds to cover the cost of projects of questionable value. See generally in this regard, De Torres, Financing Local Government 26-27 (1967). See also Fowler, Revenue Bonds 46 (1938); Lutz, Public Finance 594 (1924); McDonald, American City Government and Administration 406 et seq. (1955).

[3] Article XIV, Section 14(m) provides expressly that bonds of this nature "shall not be included in computing the indebtedness of the municipality for the purpose of any limitation herein."

[4] LSA-R.S. 33:4251.

[5] LSA-R.S. 33:4252.

[6] *Ibid.*

[7] LSA-R.S. 33:4258. The election is also contemplated by the Louisiana constitution, Art. XIV, § 14(m), which provides, "The Legislature may, in its discretion, require an election by the taxpaying voters of the subdivision or district as a condition precedent to the issuance of such bonds. . . ."

[8] LSA-R.S. 39:871; 47:1803-1804.

[9] LSA-R.S. 33:4252; see LSA-R.S. 33:4258.

[110] [10] Harper v. Virginia State Board of Elections, 1966, 383 U.S. 663, 669.

[11] *Id.* at 666.

[12] Carrington v. Rash, 1965, 380 U.S. 89, 91.

[13] Williamson v. Lee Optical of Oklahoma, 1955, 348 U.S. 483; Carrington v. Rash, 1965, 380 U.S. 89.

[14] Bayside Fish Flour Co. v. Gentry, 1936, 297 U.S. 422, 429; Arkansas Natural Gas Co. v. Arkansas R.R. Comm., 1923, 261 U.S. 379, 384; Cox, Constitutional Adjudication and the Promotion of Human Rights, 80 Harv.L.Rev. 91, 94-95 (1966).

[15] See also Dusch v. Davis, 1967, 387 U.S. 112.

[16] See, e.g., The Wall Street Journal, vol. XLI, no. 101 (Wednesday, May 22, 1968), p. 21, cols. 1 & 2.

[17] E.g., Code of Ordinances, Jefferson Parish, Louisiana, § 18-11.

[18] See, e.g., The State of the States: Troubled, *Newsweek* (January 31, 1966), pp. 19-20.

[19] See, e.g., Texas Const., Art. VI, § 3a; City of Richmond v. Allred, Tex., 1934, 71 S.W.2d 233; Utah Const., Art. XIV, § 3.

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[111] (TITLE OMITTED IN PRINTING)

WISDOM, dissenting.

I respectfully dissent.

I consider that Harper v. Virginia State Board of

Elections, 1966, 383 U.S. 663, 86 S.Ct. 1079, 16 L.Ed.2d 169, controls the case before this court.

In *Harper* the Supreme Court found that "voter qualifications have no relation to wealth nor to paying or not paying this [poll tax] or any other tax". 383 U.S. 666. It is true that the tax itself was attacked in *Harper* and that a poll tax is a qualification limiting suffrage in an election to vote for political representatives. Here the qualification limiting voting to resident property taxpayers applies to a vote on the issuance of municipal revenue bonds. I recognize the differences in the two situations. But the basic similarity is more important than the differences. The common fact in both situations is that eligibility to vote rests on payment of a tax. But all citizens have a stake in government—federal, state, or local government—regardless of ownership of property as evidenced by payment of a tax. This interest entitles each citizen to a voice in all elections in his city or state. As the Court said in *Harper*, "Wealth, like race, creed, or color, is not germane to one's ability to participate intelligently in the electoral process. Lines drawn on the basis of wealth or property, like those of race . . . are traditionally disfavored". 383 U.S. at 666. [112] Here, in a bond election, a citizen's lack of ownership of taxed real estate is not proof positive of his lack of interest in his city's going into the utility business.

As my brother Rubin ably analyzes the issues, the case is not one to be settled by broad generalities. The issues reduce to the question whether the distinction between property owners and non-property owners is rational or arbitrary in fixing the qualifications for voting on the desirability of a city's issuing revenue bonds to acquire and operate a public utility. The city has the legal authority to issue such bonds, even without asking the advice of any of its electors, but if a city should in advance of issu-

ance of revenue bonds ask for the approval of its citizens the equal protection clause prohibits the city's arbitrarily excluding from the election interested citizens.

Houma has a population of 35,000. As of October 24, 1967, there were 11,606 registered voters. Only 4,680 were taxpayers owning property and the total assessed value of their property was only $5,988.627. Thus forty per cent of the resident voters owning taxed property constitued a class controlling the interests of *all* the citizens of Houma in the policy decision submitted to the voters in the bond election. 1,828 voters representing an assessed valuation of $2,736,258 voted in favor of issuance of the bonds; 896 representing an assessed valuation of $1,108,268 voted against the bond issue.

As citizens of Houma, non-property residents have the same proprietary interest in municipal properties as resident taxpayers. They have the same interest in the administration of city affairs. And they are no less interested in the amount of their light bills than are property-owners. Indeed, since they constitute sixty percent of Houma's [113] electors, they have a greater aggregate of interests than the property owners have in municipally owned utilities.

In the case before us, the discrimination against citizens not owning taxed property is exacerbated by the fact that the bonds are revenue bonds. The bonds are to be paid only from the operations of the utility; they are not a charge upon other income and revenues of the municipality and are not included in computing the indebtedness of the municipality for the purposes of any constitutional or statutory debt limitation. If the operations should be unprofitable, the property-owner will have no greater burden than anyone else. If the operations should be profitable, the

profits go into the General Fund of the City of Houma and, presumably, will aid all the citizens in providing police protection, fire protection, and other city services.

There is a wide difference of opinion between the plaintiffs and the defendants as to whether the effect of Houma's ownership of utilities will be an increase or decrease in light and gas bills. But certainly everyone in Houma who flicks on an electric light or whose wife turns on the gas in the kitchen has a genuine interest in the question—whether he is a landlord or tenant. The tenant should be able to protect that interest by a declaration in the form of a vote—if the proposition is put to his landlord. In one way or another, the tenant pays the bill.

There may have been a time when ownership of property as a voter's qualification could have been defended as part of the American system of checks and balances. The vote of the property-owners could be looked to as a restraint on governmental operations financed by taxes. The framers of the United States Constitution did not adopt this limitation on federal sufferage, but a number of the [114] states did limit the vote to freeholders. Now, however, we are living in an age when there are utility taxes, sales taxes, cigarette taxes, gasoline taxes, income taxes, and a host of taxes, notions of which never crossed the minds of the Founding Fathers. It is a mistake therefore to put all property taxpayers in a class with veto power over governmental revenue bonds issues, as if other classes of citizens pay no taxes to their city or state and have no legitimate interest in governmental operations.

The defendant's argument that property owners have a special interest is enough in itself to destroy the rationality of the classification in a revenue bond election. In such an election, the vote is limited to persons whose prop-

erty taxes will, by statute, not be increased if the revenues fall short of expectaations. If the General Fund of the City should suffer, the greater share of the burden will fall on the excluded class of non-property owners, that is, sixty per cent of the resident voters. In final analysis, the requirement of property ownership invites the property owners, forty per cent of the voters, to vote themselves lower ad valorem rates or the continuance of existing rates while shifting the greater burden of carrying the City's General Fund to the other sixty per cent of the resident voters.

I would hold that the distinction between property owners and non-property owners in an election to vote on the issuance of municipal revenue bonds is so arbitrary as to deny equal protection of the laws to be excluded non-property owning residents of Houma. Accordingly, I would grant the injunction and the requested declaratory judgment. Such a holding need not affect adversely bonds now outstanding. To protect the vested interests of cities and [115] bondholders in bonds already issued, I would apply the decision—as I see it—prospectively only.

Filed
U. S. District Court
Eastern District of La.
Jul 23, 10:45 AM '68
A. Dallam O'Brien, Jr.
Clerk
B

8-5-68
Jul 25 1968

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[116] UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

SECTION "C"

No. 67-1853

CIVIL ACTION

JOSEPH Q. CIPRIANO

versus

CITY OF HOUMA,
G. LESLIE BROUSSARD, Mayor,
CHRISTIAN L. OLIVIER, CHARLES DAVIDSON,
PETER BOURGEOIS, JR., SAMUEL LUSCO and
WILBERT P. BONVILLIAN

JUDGMENT

Considering the written opinion of the Court on file herein, the dissenting opinion of Judge Wisdom, and considering the direction of the Court as to entry of judgment;

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of defendants, City of

Houma, G. Leslie Broussard, Mayor, Christian L. Olivier, Charles Davidson, Peter Bourgeois, Jr., Samuel Lusco and Wilbert P. Bonvillian, and against plaintiff, Joseph Q. Cipriano, dismissing said plaintiff's suit with costs.

New Orleans, Louisiana, this 23 day of July, 1968.

/s/ JOHN MINOR WISDOM
UNITED STATES CIRCUIT JUDGE

/s/ ALVIN B. RUBIN
UNITED STATES DISTRICT JUDGE

/s/ JAMES A. COMISKEY
UNITED STATES DISTRICT JUDGE

√ Kenneth T. Watkins, Esq.
Louis Watkins, Esq.
James C. Walker, Jr., Esq. } 415 Goode St., Houma
√ Kenneth C. DeJean, Esq.—Special Counsel to Atty. Gen'l. P. O. Box 44005, B. R., La.
√ R. Gordon Kean, Jr., Esq.—P. O. Box 1588, B. R., La.
√ E. E. Huppenbauer, Jr., Esq.
√ Ted J. Borowski, Esq.
√ Kenneth Ford
Suite 2313 225 Baronne

Filed
U. S. District Court
Eastern District of La.
Sep 6, 5:47 PM '68
A. Dallam O'Brien, Jr.
Clerk
B

[117] UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

SECTION "C"

No. 67-1853

CIVIL ACTION

JOSEPH Q. CIPRIANO

VERSUS

CITY OF HOUMA,
G. LESLIE BROUSSARD, Mayor,
CHRISTIAN L. OLIVIER, CHARLES DAVIDSON,
PETER BOURGEOIS, JR., SAMUEL LUSCO and
WILBERT P. BONVILLIAN

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Joseph Q. Cipriano, the appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment dismissing the complaint entered in this action on July 25, 1968.

This appeal is taken pursuant to 28 U.S.C. Section 1253.

WATKINS, WATKINS & WALKER
415 Goode Street
Houma, Louisiana
Attorneys for Plaintiff-Appellant
BY: /s/ KENNETH WATKINS
KENNETH WATKINS

[118] (TITLE OMITTED IN PRINITNG)
PROOF OF SERVICE—AFFIDAVIT

I, KENNETH WATKINS, attorney and partner in the law firm of Watkins, Watkins & Walker, attorneys of record for Joseph Q. Cipriano, Appellant herein, depose and say that on the 6th day of September, 1968, I served a copy of the foregoing Notice of Appeal to the Supreme Court of the United States, on the City of Houma, G. Leslie Broussard, Mayor, Christian L. Olivier, Charles Davidson, Peter Bourgeois, Jr., Samuel Lusco and Wilbert P. Bonvillian, on the State of Louisiana, through the Honorable Jack P. F. Gremillion, Attorney General, The Municipal Association, and the Louisiana Security Dealers Association, Inc., Amicus Curiae, by mailing a copy in duly addressed envelopes, with first class postage prepaid, to their respective attorneys of record, as follows:

[119] 9/30/68

TO: Ted J. Borowski, Esq.
Borowski & McMahon
Attorneys at Law
Landry Building
Houma, Louisiana 70360
and
E. E. Huppenbauer, Jr., Esq.
Cox, Bagot & Huppenbauer
Attorneys at Law
707 National Bank of Commerce Building
New Orleans, Louisiana 70112
Attorneys for City of Houma,
G. Leslie Broussard, Mayor,
Christian L. Olivier, Charles
Davidson, Peter Bourgeois, Jr.,
Samuel Lusco and Wilbert P.
Bonvillian

TO: Kenneth C. DeJean, Esq.
Special Counsel to the Attorney General,
Offices of the Attorney General of the

State of Louisiana
Capitol Building
Baton Rouge, Louisiana
Attorney for State of Louisiana

TO: R. Gordon Kean, Jr., Esq.
Sanders, Miller, Downing & Kean
Baton Rouge Savings & Loan Building
P. O. Box 1588
Baton Rouge, Louisiana 70821
Attorney for Louisiana Municipal Auditorium

TO: Kenneth W. Ford, Esq.
Foley, Judell & Morel
Suite 2313, 225 Baronne Street
New Orleans, Louisiana 70112
Attorney for Louisiana Security Dealers Association, Inc.

I further depose and state that the above named parties and Amicus Curiae constitute all parties of record and Amicus Curiae previously having made any appearance in these proceedings.

[120]

/s/ KENNETH WATKINS
KENNETH WATKINS

SUBSCRIBED AND SWORN TO before me,
at Houma, Terrebonne Parish, Louisiana
this 6th day of September, 1968.

/s/ J. C. WALKER, JR.
JAMES C. WALKER, JR.
NOTARY PUBLIC

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[121] (TITLE OMITTED IN PRINTING)

REQUEST TO CLERK TO CERTIFY AND TRANSMIT ENTIRE RECORD

To: The Honorable A. Dallam O'Brien
Clerk of the United States District Court
Eastern District of Louisiana

Pursuant to the provisions of Rule 12(1) of the Rules of the Supreme Court of the United States, you are requested to certify and transmit to the Supreme Court of

the United States the entire record of the proceedings herein.

WATKINS, WATKINS & WALKER
415 Goode Street
Houma, Louisiana
Attorneys for Plaintiff-Appellant
BY: /s/ KENNETH WATKINS
KENNETH WATKINS

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[122] (TITLE OMITTED IN PRINTING)
MOTION TO HAVE ORIGINAL RECORDS TRANSMITTED TO THE SUPREME COURT OF THE UNITED STATES

Plaintiff-appellant petitions the Court, pursuant to Rule 12, paragraph (3) of the Rules of the Supreme Court of the United States, to authorize and instruct the Clerk of the District Court to transmit as a part of the record upon appeal to be filed in the Supreme Court of the United States, the original of all documents, transcripts, exhibits, or other parts of the District Court records, of which there are no copies on file, upon the following grounds:

There are only originals of the transcript, exhibits, documents, newspaper clippings and other parts of the District Court records on file, which must be submitted to the Supreme Court. A great deal of expense and work would be required to prepare copies thereof for the transcript of record on appeal.

October 28, 1968.

WATKINS, WATKINS & WALKER
Kenneth Watkins
/s/ JAMES C. WALKER, JR.
Counsel for Plaintiff-Appellant
P. O. Box 1047
Houma, Louisiana
Telephone 872-3256
10-28-68

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[123] (TITLE OMITTED IN PRINTING)
ORDER THAT ORIGINAL RECORDS BE FORWARDED TO SUPREME COURT

Pursuant to the motion to transmit the original record on appeal of the above-entitled cause to the Supreme Court of the United States:

IT IS HEREBY ORDERED, that the documents and papers received in evidence in the District Court in the trial of this cause, and the stenographer's transcript of the proceedings held before the three-judge court on April 19, 1968, may all be forwarded, in lieu of copies of such documents and papers, to the Clerk of the Supreme Court of the United States as a part of the transcript of the record on the appeal herein.

October 28, 1968.

/s/ JOHN MINOR WISDOM
United States Circuit Judge

U. S. District Court
Eastern District of Louisiana
Filed Oct 30 1968
A. Dallam O'Brien, Jr.
Clerk
B

[125] IN THE

UNITED STATES DISTRICT COURT
FOR THE
NEW ORLEANS DIVISION

CIVIL ACTION

No. 67-1853

"C"

JOSEPH Q. CIPRIANO

VERSUS

CITY OF HOUMA,
G. LESLIE BROUSSARD, MAYOR,
CHRISTIAN L. OLIVIER, CHARLES DAVIDSON,
PETER BOURGEOIS, JR., SAMUEL LUSCO and
WILBERT P. BONVILLIAN

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

Kenneth Watkins,
Louis Watkins, Jr.
James C. Walker, Jr.
Attorneys for Appellant-Plaintiff
Ted J. Borowski
E. E. Huppenbauer, Jr.
Attorneys for Defendants
Kenneth C. DeJean
Special counsel to Attorney General, Intervenor
R. Gordon Kean, Jr.

Attorney for Louisiana Municipal Association, amicus curiae

(The above entitled and numbered cause came up for hearing on March 29, 1968, in the courtroom at 400 Royal Street, New Orleans, Louisiana, before the Honorable John Minor Wisdom, Fifth Judicial Circuit Judge, New Orleans, Louisiana and the Honorable Alvin B. Rubin, and the Honorable John A. Comiskey, District Judges, presiding.)

[126] PROCEEDINGS

March 29, 1968

JUDGE WISDOM:

The case fixed for today is Cipriano against the City of Houma.

Counsel ready?

MR. HUPPENBAUER:

Counsel is ready.

JUDGE WISDOM:

Have you given your name to the Reporter?

MR. HUPPENBAUER:

We have, sir.

JUDGE WISDOM:

Have you decided on your time? I see three attorneys standing.

MR. HUPPENBAUER:

Judge, I think we have a stand-in counsel for the Attorney General making an appearance solely for the purpose of waiving notice. Mr. Kean is special counsel for the Louisiana Municipal Association, I think he has a petition to ask the Court—

MR. KEAN:

Gordon Kean representing the Louisiana Municipal Association. Because I felt that this is a matter
[127] of interest to the association, I would like to request permission of the Court to file this petition authorizing the association to file an amicus curiae brief

in the matter in support of the position of the City of Houma as defendant.

JUDGE WISDOM:
Well, we want to decide this right now.

JUDGE COMISKEY:
No objection.

JUDGE RUBIN:
No objection.

JUDGE WISDOM:
The Court will allow you to file the petition and allow you to file briefs if they should be necessary.

MR. DeJEAN:
Kenneth C. DeJean, special counsel to the Attorney General of the State of Louisiana. I have a motion to intervene as a defendant. We are intervening and adopting the position of the City of Houma in the case and we are also waiving any requirement of notice. As I understand it, no notice was served on the Governor or upon the Attorney General, and we hereby waive that.

JUDGE WISDOM:
I suppose there is no objection from opposing counsel?

[128] MR. WATKINS:
No objection.

JUDGE WISDOM:
It's a motion or petition?

MR. DeJEAN:
It's a motion.

MR. WATKINS:
Kenneth Watkins, counsel for the petitioner in the case.

JUDGE WISDOM:
Mr. Watkins, how long would you require for your case?

MR. WATKINS:
About 10 minutes, your Honor.

JUDGE WISDOM:
You are talking about the witness?

MR. WATKINS:
No, our argument to the Court.

JUDGE WISDOM:
Very well.
What time do you require?

MR. HUPPENBAUER:
Your Honor, we have to take the testimony of Mr. Cipriano and cross-examination will probably take 10 to 15 minutes. Our argument will last no longer than 10 or 15 minutes.

JUDGE WISDOM:
[129] That's fine, the judges are glad to hear that the lawyers are so short-winded today.

MR. HUPPENBAUER:
I would like to file this supplemental motion to intervene.

JUDGE WISDOM:
Very well. Have you served opposing counsel with a copy?

MR. HUPPENBAUER:
Yes.

JUDGE WISDOM:
Mr. Watkins.

MR. WATKINS:
If the Court pleases, we previously decided to call no witnesses, but Mr. Huppenbauer and I spoke to Judge Rubin about calling the mayor for one point. Mr. Huppenbauer and I agreed to stipulate on these points which will obviate putting the mayor on.

JUDGE WISDOM:
We have a stipulation filed of record; is that right?

MR. HUPPENBAUER:
Yes, sir.

MR. WATKINS:
Yes.

[130] JUDGE WISDOM:
This is to cover a point not covered in the stipulation?

MR. WATKINS:
Elaborate on one point possibly not covered.

JUDGE WISDOM:
Very well. Mr. Huppenbauer, you will speak as counsel for the defendants?

MR. HUPPENBAUER:
Defendants, yes.

JUDGE WISDOM:
And Mr. Watkins is counsel for the plaintiff?

MR. WATKINS:
Yes.

JUDGE WISDOM:
You may proceed. Are there any further motions?

MR. WATKINS:
I would like to put this document and stipulation in the record, if I may, your Honor.

JUDGE WISDOM:
Yes.
Please go right ahead.

MR. WATKINS:
On behalf of the joint stipulation, I offer to introduce in evidence with Mr. Huppenbauer copies of pages representing legal advertisements run in the
[131] newspaper shopper's guide on November 18, 1967, two pages, and two advertisements and pages of the Houma Courier, October 13, 1967, and another page dated October 13, 1967, one dated October 17, 1967, October 20, 1967, and two of October 24, 1967, all of these pages containing legal advertisements run under

the direction and by the authority of the mayor of the City of Houma on behalf of the City of Houma with regard to the election which is the subject matter of this suit.

JUDGE WISDOM:
I assume there is no objection.

MR. HUPPENBAUER:
No objection.

JUDGE WISDOM:
Yet them be received.

MR. WATKINS:
Is it necessary I mark them?

JUDGE WISDOM:
No.

MR. WATKINS:
Very well, I will mark these, with the Court's permission, at a later time.

JUDGE WISDOM:
That's all right, we will take any motions that have been filed along with the case and you may pro-
[132] ceed now with your case.

MR. WATKINS:
Thank you, your Honor.
If your Honor pleases, to briefly summarize the—

MR. HUPPENBAUER:
May it please the Court, I believe it may be proper in line or order to take the testimony of the plaintiff, perhaps, before the argument.

JUDGE WISDOM:
I thought he was going to do that.

MR. HUPPENBAUER:
No, sir, we have called him under cross-examination.

JUDGE WISDOM:
I misunderstood, I thought since he represented the plaintiff he probably would put the plaintiff on,

but you are putting the plaintiff on. Very well then, call Mr. Cipriano to the stand.

JOSEPH Q. CIPRIANO,
called as a witness, after being duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. HUPPENBAUER:

Q Are you Joseph Q. Cipriano, a plaintiff in this proceeding, are you not, sir?

[133] A Yes, sir.

Q Where do you reside?

A 304 Foster Drive in the City of Houma.

Q For how long have you been a resident of the City of Houma?

A Since June 1, 1965.

Q Where are you employed, sir?

A Louisiana Power & Light Company.

Q What is your capacity with the Louisiana Power & Light Company?

A District Manager.

Q In this suit you have alleged that you have—you have been or you are being deprived of certain civil rights, will you explain to the Court what civil rights you are being deprived of, sir?

A I was deprived of the privilege of voting in an election which involved no taxes. The election of—this particular election deprived me of my rights to vote. Only property owners were allowed to vote, and this particular issue did not involve taxes which would be placed upon any property owners, it involved all of the residents of the City of Houma.

Q Now, you are speaking of the election held in the City of Houma on October 24, 1967, are you not?

[134] A That is correct.

Q You do not own any property within the limits of the City of Houma?

A That's correct.

Q Did you attempt to vote in the election?

A No, I did not. I did not because the announcement indicated that I could not, and all of the publications and other announcements in the area said that only property owners could vote.

Q Have you ever voted in any election in the City of Houma?

A Yes, sir, I have.

Q Did you vote in the election for the city officials at the last election held in the city?

A As I recall, I did.

Q You are a registered voter, are you not, sir?

A That is correct.

Q This election in the City of Houma was for a revenue bond issue, was it not, sir?

A This is what it was proclaimed to be, a $10,000.000 revenue bond issue.

Q And how do you feel you have been damaged by being deprived of the right to vote in the election?

A Well, particularly because of the fact by not being allowed to vote the property owners in essence will be [135] permitted to place additional financial burdens upon me. It—during the election and immediately prior, the city has indicated that it planned to take over the utilities there, and this would further tax me because I would have to pay more for my electric service to the City of Houma than I am presently paying to the utility that I am now being served by.

Q Who is furnishing you utilities now?

A Electric service, Louisiana Power & Light. The gas service by the City of Houma and indirectly I guess the City of Houma serves water because I am served by the Water Works District No. 1 and the city provides them water service.

Q Your water though is being serviced by the Water Works District?

A I am billed through the Water District.

Q And electric power by Louisiana Power & Light?

A Yes, and the gas service by the City of Houma.

Q And how do you know that the rates that you might pay if the city were operating your system would be higher than those you are paying now?

A Because I have had occasion to see the rates of both the City of Houma and those of Louisiana Power & Light Company and other utilities as well.

[136] Q What is the differential in so far as a resident unit such as yours?

A In my particular case it would probably involve some $70 or $80 annually.

Q Increase over and above?

A Increase over and above that which I am now paying.

Q Are there any rates levied by the City of Houma for utilities which are less than the Louisiana Power rate?

A Not to my knowledge.

Q Do you pay any ad valorem taxes whatsoever in the City of Houma?

A No, sir, this would be property tax.

Q Any other type of property tax?

A No, sir.

Q You seek in this action an injunction to enjoin the City from issuing bonds in furtherance of the authority granted at this election and you have alleged irreparable injury; what injury have you suffered, Mr. Cipriano?

A Well, I would suffer the injury of not having been allowed to vote and having others place additional financial burdens upon me.

Q Have these burdens been placed upon you at all at this time?

[137] A Not as yet, I am hopeful they will not.

Q Has the city taken over your system that is being serviced to you?

A No, sir, not as yet. They have gone on record as having been desirous of doing this.

Q If you feel you have been deprived of your right to vote, why did you wait 55 days after the election to seek the issuance of this injunction.

MR. WATKINS:

If your Honor please, I wish to object on behalf of the plaintiff, It's immaterial and irrelevant in as much as the statute authorizes 60 days, and as long as the man is waiting within the period prescribed by law, it's irrelevant how long he waits.

JUDGE WISDOM:

We will allow the witness to answer.

THE WITNESS:

I was hopeful actually, that the—this particular bond issue would be defeated.

BY MR. HUPPENBAUER:

Q Why then did you wait 55 days?

A What's that, sir.

Q Why then did you wait 55 days to institute this action?

A I would think there was no particular reason in discussing it with Mr. Watkins this time element came [138] about as a matter of my consultation with him.

JUDGE WISDOM:

Let's not linger too long, after all, he could have waited 59 days.

MR. HUPPENBAUER:

Yes, sir.

BY MR. HUPPENBAUER:

Q Then the only damages you feel you will probably suf-

fer is if the city would take over your system you might be forced to pay higher rates; is that correct?

A No, sir, I wouldn't say that would be completely correct. I would say anytime there are no taxes involved every registered voter should certainly be allowed to vote irregardless of this particular situation.

Q Have you voted in any other bond election within the State of Louisiana while you have been a resident here?

A I would—I think so, some years ago.

Q Were you a property owner then, sir?

A Yes, sir.

MR. HUPPENBAUER:

We have no further questions.

JUDGE WISDOM:

[139] Very well, Mr. Watkins?

[139] Very well, Mr. Watkins?

MR. WATKINS:

I have no questions of Mr. Cipriano.

JUDGE WISDOM:

Very well.

Step down, Mr. Cipriano.

Are there any further witnesses?

Mr. Huppenbauer, you have no witnesses?

MR. HUPPENBAUER:

We have no further witnesses.

JUDGE WISDOM:

Very well, you may proceed with the argument.

MR. WATKINS:

May it please the Court, in a brief resume of the skeletal facts and not the entire memoranda, the action is brought by Mr. Cipriano who is a resident and a duly registered and qualified voter in the City of Houma. The plaintiff does not own any real property, nor does he pay any ad valorem taxes on such prop-

erty. On October 24, 1967, an election was held pursuant to the authority cited for the issuance of utility revenue bonds by the City of Houma and that under the applicable statutes the election was specifically limited to resident property taxpayers. Plaintiff and all similarly situated persons were prohibited from
[140] voting in the election. He makes special note of the fact that this was a utility revenue bond election and was held under the provisions of Sub-Part C, Part 1, Chapter 10, Title 33 of the Louisiana Revised Statutes. The said statute provides that the bonds authorized by this election to be issued can be repaid only and exclusively from the income tax and revenues derived from the operation of the utility, and because of this limitation, this statute effectively prohibits the imposition of any taxes, ad valorem or otherwise, which may be used in whole or in part to retire any portion of these bonds. The only effective remedy allowed by law on these bonds is for receivership of the utility, and the receiver could increase the rates and manage it until the bonds are paid off. Because of this a property owner should have no greater stake or interest in the election than a non-property owner, as neither his property nor his property rights can in any way be adversely affected by the outcome of this election. It is plaintiff's position that the provisions of the Constitution and statutes of the State of Louisiana requiring the ownership of property and the payment
[141] of taxes thereon as a condition of voting in a revenue bond election invidiously discriminate against plaintiff and the entire members of his class, who together represent more than 59 percent of the voters of the City of Houma.

JUDGE WISDOM:

You distinguished in kind a bond issue from other kinds of taxes?

MR. WATKINS:

Yes, sir, your Honor.

This is not an ad valorem and cannot impose a

burden upon the property owner, this cannot impose a burden on the property.

We will cite to the Court a case we think offers him a distinct advantage and invites him to go out and impose an obligation on another member of the community. The case we rely on is Harper versus Virginia State Board of Elections. The Harper case was concerned with the requirement of a poll tax or a payment of a poll tax as a qualification to vote. This case is concerned with the requirements or the payment of a property tax as a qualification to vote. In the Harper case the Supreme Court concluded that a state violates the equal protection clause whenever it
[142] makes the qualifications of a voter dependent upon a payment of any fee. "Voter qualification have no relation to wealth nor to paying or not paying this or any other tax," closed quote from the Court.

The Court further declared that "The interest of the state when it comes to voting, is limited to the power to fix qualifications. Wealth, like race, creed, or color, is not germane to one's ability to participate intelligently in the electoral process. Lines drawn on the basis of wealth or property, like those of race are traditionally disfavored."

We maintain—

JUDGE WISDOM:

Your position then is that this was an improper classification because the—the limitation to property holders bears no relation to the tax or to the bond issue?

MR. WATKINS:

Right. The limitation to the property owner, your Honor, has no relationship to this bond issue in any way that this bond issue does not affect a non-property owner. They affect both the property owner and the non-property owner identically with the exception
[143] that they maintain it favors the property owner because he is going to go out, your Honor, and vote this general burden on the general community and

protect his low, favorable tax rate. He will know that these funds go into the general fund of the city if there is any over and above, and it will operate the city, and it's an invitation to go out and vote this issue in to prevent the city from coming back and asking him for property taxes. We maintain the record shows this and I believe our stipulation includes the millage rates of the City of Houma, and these advertisements I wanted in the record, which the City advertises; we have the lowest rate in the state, you please go out and vote to protect your lowest assessment.

JUDGE RUBIN:

Is there any evidence, Mr. Watkins, that this would be the result of the bond issue to increase the rates or revenue rates for utility service at the expense of the property holder?

MR. WATKINS:

No, sir, there is—as I understand, your Honor, to increase the utility rates at the expense of the property holder—

[144] JUDGE RUBIN:

Isn't that your argument—I am sorry—to the benefit of the property holder, isn't this your argument that this would be the result?

MR. WATKINS:

I certainly say this, your Honor, it certainly could be the result, and in view of the testimony we have taken in the record today and in all probability it will be the result.

JUDGE WISDOM:

Isn't the opposite result, too, with two companies functioning that the rates might be lower and the service better because of competition?

MR. WATKINS:

With two companies?

JUDGE WISDOM:

Well, two operations.

MR. WATKINS:

Well, of course, your Honor, while we don't necessarily think this is an essential ingredient of our case, I agree with your Honor that the operation of more than one company serves to—may invite competition and keep lower uniform rates under our normal system of economic development in the country, but we don't think whether or not this would impose, whether
[145] there—where this is going to fix a statutory imposition or a definite imposition of an increased rate is an essential part of this case. The fact that there is a classification and the 14th amendment in our argument and our opinion demands equal treatment of all voters whether it's an election to elect a mayor, to elect a president or to amend—

JUDGE RUBIN:

What about to vote a millage tax for schools?

MR. WATKINS:

Sir?

JUDGE RUBIN:

What about to vote a millage tax for schools?

MR. WATKINS:

Your Honor, if we are talking about an ad valorem millage tax, the requirement of property ownership as a qualification would have a reasonable but not arbitrary relationship to the proposition, because we are imposing a burden on the property owner. It may be said when we put a millage tax on his property alone in this case there is no conceivable way that the property owner can be adversely affected in any respect under the statute under which this bond election was called. We maintain that there is no reason-
[146] able relationship between property ownership in the election and the intelligent use of the ballot, and

also the ownership of property and the payment of taxes thereon, can be considered only with reference to the additional burden which may be imposed on the property owner which is not here, then it should not be considered at all.

Here we have shown and argued from the record that not only is there no possibility of an additional burden, there is the entire probability of an advantage to the property owner.

JUDGE RUBIN:

You don't believe the ownership of property has any rationale to the kind and degree of utility and amount of property service?

MR. WATKINS:

I say in fact over 59 percent of the registered and qualified voters in the City of Houma pay utilities to someone, and under the city's avowed declaration, they are going to take over all of the utilities, and so all of these people who don't own property will have the same relationship to the payment of a utility bill as will a property owner.

[147] If I have a trailer even, your Honor, and I am plugged into the city's system, I have the same relationship in paying my utilities. If I rent a house—

JUDGE RUBIN:

So does the non-resident, he can't vote either.

The question is whether the line is drawn in such a way to include rationally those that have a measurable degree of interest, whether it's rational or irrational classification, so you may in any event exclude some from voting who have an interest and include some who do not have an interest in any classification.

MR. WATKINS:

Yes.

JUDGE RUBIN:

My question is: Is there no rational relationship

between the ownership of property and the kind and quality of utility service?

MR. WATKINS:

I say, your Honor, there is no rational basis sufficient to justify the deprivation of a man's right to vote between the ownership of property and the use or payment of a utility service anymore than there is between a man who doesn't own that property and uses and pays his utility service when he rents a build-
[148] ing. They are paying the same utility service to theoretically the same customer and there is absolutely no basis for the ownership of property to be discussed in this particular instance.

JUDGE WISDOM:

It may be rational to include non-property owners who rent houses or homes in Houma, or it may be rational to include summer residents, but that doesn't mean it's irrational to base—or does it mean that it's rational to base the election on property holders—

MR. WATKINS:

Well—

JUDGE WISDOM:

—to limit it to property holders?

MR. WATKINS:

We maintain, your Honor, that the ownership of property and the payment of a tax simply has no reasonable class—connection with the subject of this election.

JUDGE WISDOM:

The property owners have electric lights and they have gas in their kitchens.

MR. WATKINS:

[149] Sir?

JUDGE WISDOM:

The property owners have electric lights and they have gas in their kitchens and water, it seems to me that there is a connection there.

MR. WATKINS:

Sir, the non-property owner, your Honor, has the same identical connection, and what we are saying, there is no greater connection, and since there is no greater connection, there is no reasonable basis for excluding a man from the franchise.

JUDGE COMISKEY:

I think that's the equal protection clause—

MR. WATKINS:

Sir?

JUDGE COMISKEY:

—want to go that far—

MR. WATKINS:

Sir?

JUDGE COMISKEY:

They always look for the concept whether or not there is any rational relationship or whether or not the relationship or law is absolutely invidious in this case to your client, not whether or not there is any reasonable relationship. We could find all kinds of
[150] reasonable relationships between non-property and property owners. It's more than a reasonable relationship that the law must be invidious to your class. Mr. Cipriano—

MR. WATKINS:

What, your Honor, could be more invidious to allow a class of 41 percent of the people in the City of Houma to go out and impose the operation of this community on other people to his personal advantage? What could be more invidious? What could be more

unfair? What could be operated, your Honor in more of a manner of subterfuge which is not direct, it's the obvious and almost necessary result—

JUDGE COMISKEY:

There is an answer, he voted on councilmen, the councilmen set the machinery in setting up the election.

MR. WATKINS:

He appreciates the fact that a franchise is granted. It should be granted without discrimination, and the—if the legislature chose to have no election limits, every man with an equal interest in revenues would have an equal opportunity to vote on—for the members of the city council, but once the state grants
[151] the franchise in this type of instance it must grant it with equality to all people in the class and without discrimination.

JUDGE RUBIN:

Mr. Watkins, is there any data available to you, I don't believe it is in the stipulation, by which we could determine what percentage of the electors who were eligible to vote in Houma are property owners and what percentage are not property owners?

MR. WATKINS:

I think, your Honor—

JUDGE RUBIN:

In other words—

MR. WATKINS:

—we have that in the stipulation. If I may, I think the stipulation—would the Court pardon me for one moment.

JUDGE WISDOM:

You have that in the last paragraph, I think, the total number of property taxpaying voters.

MR. WATKINS:

I think we have the total number of registered voters who do not and the total number of registered voters who do.

[152] JUDGE RUBIN:

I see that, thank you.

Is there—let me just ask you one more question. This information would enable us to determine what percentage of the registered voters were property owners, it would also enable us to determine the number of people who have utility service, but it doesn't enable us to determine what property taxpaying voters are also people who have utility service. I take it almost all of the property taxpaying voters would be utility customers.

MR. WATKINS:

I would say, your Honor, that would, offhand, appear to be a fair interpretation; almost anyone who owns—not necessarily, there may be some unimproved property. I would say that on any improved property the man is taking utilities, that would be reasonable to assume.

JUDGE RUBIN:

If he is a resident only, even though he is likely to be residing someplace using utilities.

MR. WATKINS:

Right, his improved property, your Honor.

JUDGE RUBIN:

[153] Approximately 57 percent of the utilities customers in fact were eligible to participate in the election, 6,700 utilities customers—

MR. WATKINS:

Yes, sir.

JUDGE RUBIN:

—and 4,600 property taxpaying voters, about 70 percent of the utilities customers or 60 percent were eligible to vote in the election?

MR. WATKINS:

Of the utility customers of the City of Houma, this percentage had the opportunity to vote in the election, but again, your Honor, we maintain the city, according to their records and the testimony of Mr. Cipriano, will take over all utility customers in the City of Houma, there is their declared intention, and they have initiated steps to this end. So to use this percentage in this particular case, this is—we are taxing all of the voters in the City of Houma, and all equally to run the city. By allowing the property owners to do so, we are inviting him to go out and reduce his millage by putting this on a general fund basis. I say to give everybody a chance to vote on this, and if this election were to pass, then it would be the
[154] declaration of all of the citizens who have an equal interest in the general revenues of the city and an equal interest in the public affairs of that city have had an opportunity to pass on it, and they may have, of necessity—not of necessity but they may have passed this election, then there would be no argument; but to limit it to one group who has a distinct advantage to himself in going out and doing this and passing this election, we certainly maintain is discriminatory in the worse way.

We submit in the instant case where every registered voter has an equal stake and interest in the city utility system and revenues that equal protection demands that they have an equal opportunity to vote.

JUDGE COMISKEY:

I notice now in your stipulation you say your client does not own property, real property, or pay ad valorem tax on real property, I assume he owns no personal property, no ad valorem—

MR. WATKINS:
I assume not in—

JUDGE COMISKEY:
His testimony seemed to broaden his—

[155] MR. WATKINS:
I couldn't give you an answer on that. Generally in Terrebonne Parish there is no personal assessment.

JUDGE WISDOM:
We have a small tax here.

MR. WATKINS:
At least to my knowledge I know it is not on me, I have never paid this and, of course, I own, you know, personal property, you know, automobiles, but neither myself nor anyone I know of pays this or has ever paid it in the parish for that matter.

JUDGE COMISKEY:
You don't even have a tax on automobiles?

MR. WATKINS:
No, sir.

JUDGE COMISKEY:
If you had that tax, then he would be able to vote?

MR. WATKINS:
Not in Terrebonne, business is—I am talking about individuals, no.
Thank you.

JUDGE WISDOM:
Mr. Huppenbauer.
We will give you a little for rebuttal.

MR. HUPPENBAUER:
[156] May it please the Court, it has been indicated that counsel for plaintiff's case rests wholly on an ex-

tension of the doctrine from the Harper case. In the Harper case I believe the Court must concede it dealt really with the competency of the voter or perhaps his affluence, and every case relied on by the Supreme Court of the United States dealt with election of officials and reapportionment. We feel there is a very distinct rationalization when the interest of the voter in this instance as opposed to the interest of a voter in an election or candidate for two reasons:

No. 1, as has been admitted by counsel, if the utility system which is owned by the city doesn't produce sufficient revenue to carry the burden of the bonds used for the purchase of this facility as well as additional revenue to supplant the city, then the burden of tax—

JUDGE WISDOM:

Suppose the city makes money, what happens to it?

MR. HUPPENBAUER:

The money goes into the general fund for the benefit of all citizens.

JUDGE WISDOM:

He would have an interest in this, too—

[157] MR. HUPPENBAUER:

Yes, sir.

JUDGE WISDOM:

Whether or not he owned property, that would indicate perhaps he should have an opportunity to vote for or against it?

MR. HUPPENBAUER:

But if he desires to vote, say to grant an unlimited amount of bonds to his advantage, perhaps to have an additional flow of revenues flow for his benefit, you have got to consider the other point that the control to some extent on the issuance of bonds must

be placed in people who have a vested interest. It affects the general credit of the city even though the bonds may be limited in security, still the credit is affected and if a default revenue bond it has a great affect on the ad valorem bond which is a bond tax—

JUDGE WISDOM:

It seems to me anyone living in the city whether or not he owns property may have an interest in the credit of the city as to how well it is functioning.

MR. HUPPENBAUER:

It may, but he has no monetary interests that he will be deprived of by the payment of taxes. We feel
[158] the vested interest of the taxpayer which, of course, is the same interest that the taxpayer is burdened with in general obligation bonds, the legislature saw fit to impose this—this one limitation in revenue bonds, like it has done under the constitution, the general obligation bond; but furthermore, this is not the only reason bonds can be or should be or are issued. The vote of the people is only one of many limitations, even though the people may vote the bond, it's the governing authority that must issue and sell the bond, the sole intention, the sole purpose is vested in the governing authority. He, like everybody else, has the right to elect his officials. The governing authority fixes the rates. There is no control by the Louisiana Power Commission or anyone else, the rates certainly can't be irrational as far as classification, as long as there is no abuse in classification by the city officials in fixing rates. Whether or not bonds are issued or not, city officials—the governing body fixes rates in any manner say besides controlling issue and sale of bonds. We have other constitutional provisions, limit of interest, limit of principal payment term of bonds, all of these are controls and
[159] limitations on the issuance of bonds, and the requirement of a vote is only one of many, so this is not the heart of the bond issue.

The bond issue really is issued by the governing

authority for purposes that it sees fit to improve the utility system of this city.

JUDGE COMISKEY:

Yes, but you will agree the one that counts is the vote, without the vote all the others would not issue the bonds.

MR. HUPPENBAUER:

The vote doesn't count either.

JUDGE COMISKEY:

No, no?

MR. HUPPENBAUER:

Without the tax board you cannot even vote, without the vote they can force them to—

JUDGE COMISKEY:

Even after the people vote favorably the council could veto—

MR. HUPPENBAUER:

The council can decline to not issue any bond they are asking for authority to do something they deem—they also have the state bond tax board to give them [160] approval.

JUDGE COMISKEY:

So the votes in the election are just advisory, so to speak, to the council?

MR. HUPPENBAUER:

It's a limitation, because if the people see fit—maybe they are going way out of bounds to issue more bonds they feel advisable, they can curtail it but they can't force them to, so the real control is vested in the governing authority, which is the elected political officials that everyone who is a registered voter has—

JUDGE WISDOM

You know it's more than advisory, the council cannot act without the approval—

MR. HUPPENBAUER:

Correct, but even with the approval they can decline to act.

JUDGE RUBIN:

It's veto,—

JUDGE WISDOM:

Veto—

MR. HUPPENBAUER:

It's not wholly based on the vote, it's one of the authorizations, but so is the other limitations of the [161] state bond and tax board, the market, other things govern the issuance—

JUDGE RUBIN:

You can characterize it as veto.

MR. HUPPENBAUER:

Sir?

JUDGE RUBIN:

Isn't the apt characterization veto, you can prevent the property owner—the election can prevent it from being issued but it cannot require it?

MR. HUPPENBAUER:

Correct, sir, it cannot require it.

We feel it would be an unreasonable extension of the Harper doctrine to involve this type of issue. We don't—we don't see that equal protection is really at issue in the case, but if it is at issue, we feel that the Court must look to the—this particular case, this particular plaintiff and the effect of this doctrine.

JUDGE WISDOM:

Harper may be distinguishable, but suppose there were no Harper, wouldn't the argument still be valid that you are basing a vote on—on a classification, whether there is no real difference between the class

of property owner and non-property owner so far as
[162] revenue bonds are concerned?

MR. HUPPENBAUER:

We belive there is a distinction because of the interest the property taxpayer—

JUDGE WISDOM:

The only thing you have been able to say so far, if the operation is not a success, if the utility is not a success and loses money, then the burden would fall on the property holders?

MR. HUPPENBAUER:

Correct. The credit of the city, higher interest rates—

JUDGE WISDOM:

Not direct but indirect effects on the non-property holder.

MR. HUPPENBAUER:

So is the effect of the non-property holder, it's indirect effect, he can still control his rights by electing councilmen who will attach reasonable and just rates on utility services. The bonds wouldn't govern that, it's the governing authority that really governs that.

We contend the vote is only one of the other limitations. As Judge Rubin said, it's a veto power and it can deny the council to do something, but it cannot
[163] enforce them to do it, and we feel that equal protection is not here because of the distinction between capacity and affluence versus really property interest of people owning real property in the city, and we submit that the doctrine should not be extended to this case.

JUDGE WISDOM:

Mr. Watkins:

MR. WATKINS:

Your Honor, just one or two points with regard to veto or advisory. True, when we look at human nature and we consider this in the practical light of what we know about human beings, there is really not a veto. The city council has declared their intentions for all practical matters of issuing this before they get to a vote. They have said, why, they have studied this, they have ordered large surveys from engineers, so as a practical matter, they are going to issue them. The real key is that this is an essential element, this vote. It is an essential element and without this vote they cannot be issued. If it's truly advisable, I say would it not be better to get the advice of the good citizens in the community and have the benefit of all the thinking on it? And the second [164] point, your Honor, with respect to this indirect effect of the property owner, if the full faith and credit of the city is not affected, counsel argues that by these bonds, by these bonds, counsel argues that, yet a failure of this utility might actually affect the full faith and credit and impose a tax on the—impose an ad valorem tax without him voting on it, it could affect him no more direct than his going out and electing a spendthrift and the council going out and running into debt, that would hurt the city as much as a bad utility system. So that we think these arguments bear no material relationship to the question at hand, and that the true and controlling point is that there is no reasonable basis for the distinction in the issue between a property owner and a non-property owner, and that consequently each registered voter should be given an equal opportunity to vote.

JUDGE RUBIN:

Let me ask you for your comment if you have one on the arguement offered in the brief by the defendants that the granting of a declaratory judgment in the case would imperil the validity of outstanding bond issues.

[165] MR. WATKINS:

Your Honor, we think that is in no way applicable in the case, for the controlling—this bond issue is the bond issue we are presently talking about, as far as the declaratory judgment, it would be necessarily—

JUDGE WISDOM:

—hold on it, we wouldn't have any jurisdiction unless you attack the state constitution, we wouldn't have three-judge court jurisdiction.

MR. WATKINS:

No, sir, but the declaratory judgment would only have a prospective effect. In the Linkletter case, counsel cited, as I appreciate the Supreme Court ruling, civil and criminal matters are treated identically and that they don't offer retrospective affect in criminal, and there is no necessity for this court ordering or offering retrospective affect in this type of case.

JUDGE WISDOM:

The general rule is retrospective.

MR. WATKINS:

Sir?

JUDGE WISDOM:

It seems when we apply it only prospectively—

[166] MR. WATKINS:

Your Honor, I say that once the 60-day period has expired, then can no one attack this,

JUDGE WISDOM:

Even on constitutional grounds?

MR. WATKINS:

We would say this, your Honor, as far as destroying the financial stability of the state, we don't see how this would have any affect on any bond issue passed, bonds sold, the 60-day period passed, not as

a matter of res judicata and if this Court uses this particular case, it need not issue any retrospective edict or make it retrospective. We don't think it necessary to the satisfaction of this case and all future cases in this particular instance.

JUDGE WISDOM:

How much time will you need or would you care to submit supplemental briefs in the matter?

MR. WATKINS:

Yes, your Honor, I have only today received a supplemental note this afternoon from Mr. Huppenbauer which I haven't yet had an opportunity to read.

JUDGE WISDOM:

How much time would you require for a supplemental brief?

[167] MR. WATKINS:

I would say 10 to 15 days, would that be sufficient for the Court?

JUDGE WISDOM:

And Mr. Huppenbauer, how much time would you require?

MR. HUPPENBAUER:

We don't feel we need to supplement our brief.

JUDGE WISDOM:

You may change your mind after you get a copy of it.

MR. HUPPENBAUER:

We would like 10 days after.

JUDGE WISDOM:

Suppose you file a brief within 15 days and suppose—

MR. WATKINS:

Yes, sir.

JUDGE WISDOM:

—opposing counsel will have another 10 days. Is there a question of time here? Is time of the essence?

MR. HUPPENBAUER:

Time is somewhat of the essence.

JUDGE WISDOM:

Why don't you get yours in say in—

MR. WATKINS:

[168] Ten days.

JUDGE WISDOM:

—10 days, and you get yours in 5 days thereafter.

MR. HUPPENBAUER:

Yes.

JUDGE WISDOM:

Mr. DeJean, you may have the same time.

MR. WATKINS:

I haven't seen counsel's amicus curiae brief, we don't have a—would the plaintiff be entitled to any reply to the amicus curiae brief at the same time?

JUDGE WISDOM:

Why don't you do that, you still have 5 days before Mr. Huppenbauer's answering, if he decides he should answer your brief.

In the meantime the Court will stand adjourned under the usual orders.

(Whereupon, Court adjourned.)

[169] CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings had in the above titled and numbered cause, taken by me on March 29, 1968 to the best of my ability and understanding.

/s/ GARY JON DAVIS
Gary Jon Davis
Official Court Reporter
United States District Court
Eastern District of Louisiana
New Orleans Division

UNITED STATES DISTRICT COURT
Office of the Clerk
Eastern District of Louisiana
New Orleans, Louisiana

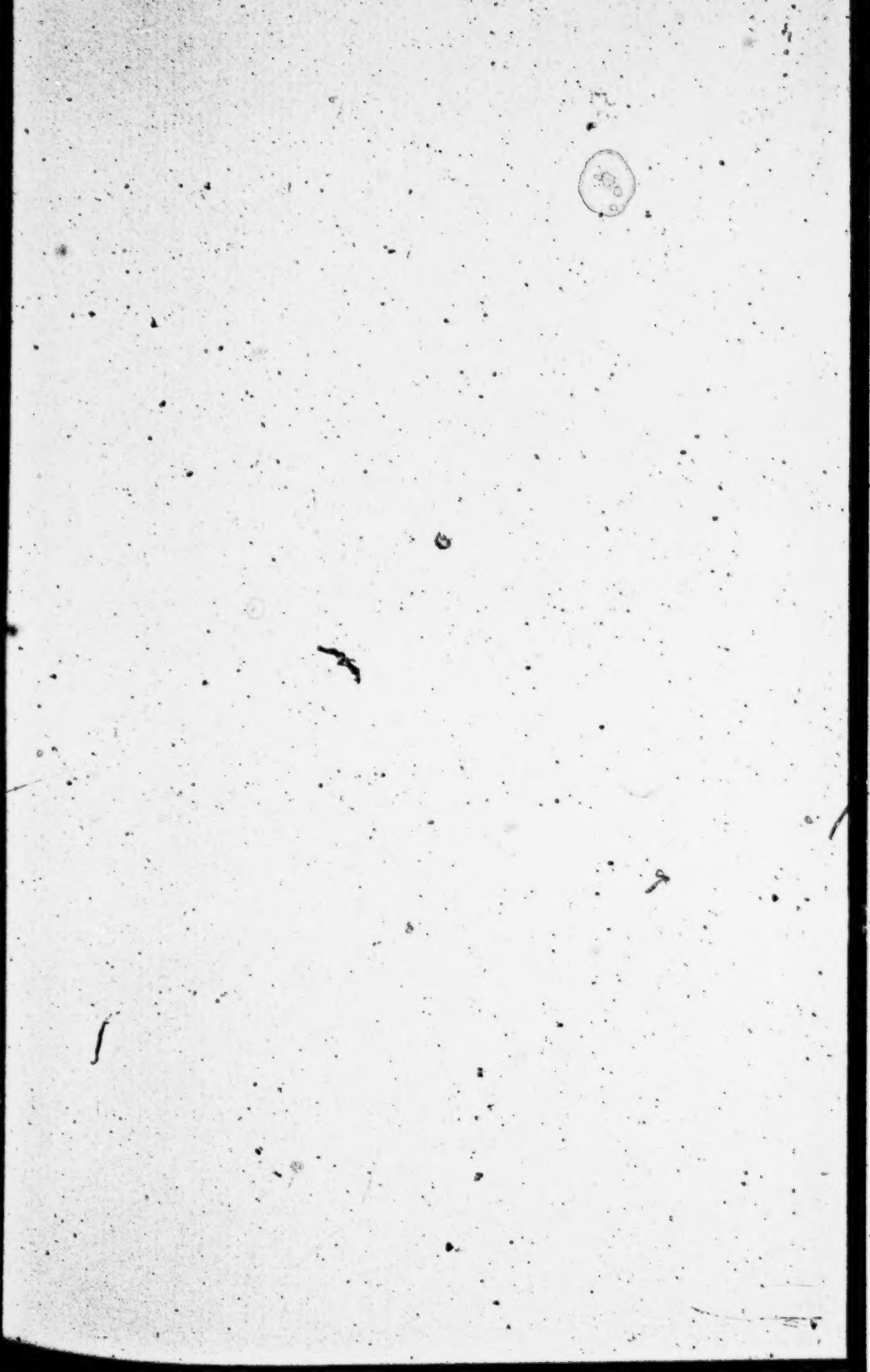
CLERK'S CERTIFICATE

I, A. DALLAM O'BRIEN, JR., Clerk of the United States District Court for the Eastern District of Louisiana, do hereby certify that the foregoing 169 pages contain and form a full, true and complete record in the below numbered and entitled cause:

Joseph Q. Cipriano
versus,
City of Houma, G. Leslie Broussard, Mayor, Christian L. Olivier, Peter Bourgeois, Jr., Samuel Lusco and Wilbert P. Bonvillian
Civil Action 67-1853

WITNESS MY HAND and the seal of said Court at the City of New Orleans, Louisiana, this 30th day of October 1968

A. DALLAM O'BRIEN, JR., CLERK
By: /s/ A. F. PAGE, JR.
Deputy Clerk



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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 705

JOSEPH Q. CIPRIANO,

Appellant,

versus

CITY OF HOUMA, G. LESLIE BROUSSARD, Mayor, CHRISTIAN L. OLIVIER, CHARLES DAVIDSON, PETER BOURGEOIS, JR., SAMUEL LUSCO and WILBERT P. BONVILLAIN,

Appellees.

On Appeal from the United States District Court for the Eastern District of Louisiana.

STATEMENT AS TO JURISDICTION.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No.

JOSEPH Q. CIPRIANO,

Appellant,

versus

CITY OF HOUMA, G. LESLIE BROUSSARD, Mayor, CHRISTIAN L. OLIVIER, CHARLES DAVIDSON, PETER BOURGEOIS, JR., SAMUEL LUSCO and WILBERT P. BONVILLAIN,

Appellees.

On Appeal from the United States District Court for the Eastern District of Louisiana.

STATEMENT AS TO JURISDICTION.

May It Please the Court:

The appellant, pursuant to United States Supreme Court Rules 13(2) and 15, files this his jurisdictional statement on the basis of which it is contended that the Supreme Court of the United States has jurisdiction on a direct appeal to review the final decree of a three-Judge District Court for the Eastern District of Louisiana, entered on July 23, 1968, denying a permanent injunction and refusing to declare certain provisions of Louisiana

law, under which a bond election was held, to be in violation of the Constitution of the United States, and that a substantial question is presented.

OPINIONS BELOW

The District Court delivered a written opinion and dissenting opinion on July 15, 1968, and entered Judgment on July 23, 1968. The judgment and opinions are reported in 286 F. Supp. 823 (1968). Copies of the opinions and judgment are attached to this jurisdictional statement, as Appendices B and C.

JURISDICTION

The appeal herein is from a final decree made and entered by the United States District Court for the Eastern District of Louisiana specially constituted under 28 U.S. Code, Sections 2281 and 2284 upon the plaintiff's application for a temporary and permanent injunction to restrain the enforcement, administering, execution of, or the giving effect to provisions of the Constitution and statutes of the State of Louisiana which require the ownership of property and the payment of taxes thereon as a qualification or a condition precedent to voting in elections in Louisiana as repugnant to the due process and equal protection clauses of the Fourteenth Amendment of the Constitution of the United States.

The application of plaintiff further sought a Judgment declaring the aforementioned provisions of the Constitution and statutes of the State of Louisiana to be void for repugnance to the same clauses of the Fourteenth Amendment of the Constitution of the United States and particularly declaring void an election held by the City of Houma, Louisiana on October 24, 1967, pursuant to the

aforementioned constitutional and statutory provisions of the State of Louisiana.

The final decree appealed from was made on July 23, 1968 and entered on July 25, 1968. Notice of appeal was filed in the United States District Court for the Eastern District of Louisiana on September 6, 1968.

The Supreme Court of the United States has jurisdiction to review by direct appeal the Judgment complained of by the provisions of 28 U.S. Code, Sections 1253 and 2101(b).

The following decisions are believed to sustain the jurisdiction of the Supreme Court to review the Judgment on direct appeal in this case. *Florida Lime and Avocado Growers, Inc. v. Jacobsen*, 362 U.S. 73, 80 S. Ct. 568 (1960) and *Radio Corp. of America v. United States*, 341 U.S. 412, 71 S. Ct. 806 (1950).

Statutes and constitutional provisions are Louisiana Constitution Article 14, Section 14(m) (West La. Const. Vol. 3, Page 42); Sub-Part C—Part I, Chapter 10, Title 33 of the Louisiana Revised Statutes (West LSA-R.S. 33:4251-4262, Vol. 20A, Pages 178-186), and Part II, Chapter 4, Subtitle II, Title 39 of the Louisiana Revised Statutes (West LSA-R.S. 39:501-518, Vol. 22, Pages 685-730), all of the above cited being annexed hereto, as Appendix A.

The three-judge District Court held the above statutes not to be unconstitutional, with a dissent to said decision rendered by the panel Judge from the Fifth Circuit Court of Appeals.

QUESTIONS PRESENTED

Article 14, Section 14(m) of the Louisiana Constitution of 1921 provides that ". . . The Legislature may, in its discretion, require an election by the tax-paying voters of the subdivision or district as a condition precedent to the issuance of such bonds, in which case the voters' qualifications shall be governed by the provisions of this Section XIV pertaining to other bond elections. . . ."

Pursuant to the above constitutional provisions, La.-R.S. 33:4251-4262 were enacted and which, by reference, incorporated La. R.S. 39:501-518.

The above cited constitutional and statutory provisions set forth the procedure for revenue bond elections in corporate municipalities in the State of Louisiana, which provisions require that the voters be property-owning tax-payers. The applicable statutes provide that any bonds issued thereunder shall be repaid solely and exclusively from the income and revenues of the utility acquired, constructed, or improved with the monies derived from the sale of such bonds. The principal question presented is:

> Whether the above cited constitutional and statutory provisions of the State of Louisiana are unconstitutional and in violation of the due process and equal protection requirements of the Fourteenth Amendment of the Constitution of the United States insofar as they require the ownership of property and the payment of taxes thereon as a qualification to vote in a revenue bond election, which election cannot, either directly or indirectly, impose any tax or other burden on property-owning tax-payers.

STATEMENT OF THE CASE

Joseph Q. Cipriano, appellant herein, is a duly registered and qualified voter in the City of Houma, Parish of

Terrebonne, State of Louisiana but does not own any real property nor does he pay any municipal ad valorem taxes on any such property. On September 12, 1967 the defendants, the Mayor and Board of Aldermen of the City of Houma, Louisiana adopted the resolution ordering and calling a special election to be held in the City of Houma, State of Louisiana pursuant to Part II, Chapter 4, Title 39, Section 508 (La. R.S. 39:508), and Sub-Part C, Part I, Chapter 10, Title 33, Section 4258 (La. R.S. 33:4258) of the Louisiana Revised Statutes of 1950, and Article 14, Section 14(m) of the Louisiana Constitution of 1921 to authorize the issuance of utility revenue bonds by said city in the amount of $10,000,000.00. Under the terms of the above resolution the election was specifically limited to resident property taxpayers of the City of Houma.

The election was held on October 24, 1967, pursuant to the resolution adopted on September 12, 1967 and further pursuant to the authorities hereinabove stated. The Mayor and Board of Aldermen met on October 25, 1967 and canvassed the returns of the election and declared the results thereof. In said election 1,828 voters representing $2,736,258.00 in assessed valuation voted in favor of the proposition and 896 voters representing $1,108,268.00 in assessed valuation voted against the proposition.

Appellant is a member of a class of 6,926 duly qualified and registered non-property-taxpaying voters in the City of Houma, all of whom are similarly situated and entitled to bring a class action under Rule 23 of the Federal Rules of Civil Procedure. Appellant and all members of this class were prohibited from voting in the election held in the City of Houma on October 24, 1967 because of the statutory provisions of Louisiana law requiring that a voter be a qualified resident property taxpayer of the City of Houma.

During the year 1967 the total number of residents of the City of Houma was approximately 35,000. The total number of registered voters in the City of Houma on October 24, 1967 was 11,606. The total number of property taxpaying voters on October 24, 1967 in the City of Houma was 4,680. The total number of non-property-taxpaying registered voters on October 24, 1967 in the City of Houma was 6,926.

Plaintiff, appellant herein, brought this action in the United States District Court for the Eastern District of Louisiana, New Orleans Division, as a class action under Rule 23 of the Federal Rules of Civil Procedure.

Appellant sought a Declaratory Judgment under Title 28, Sections 2101 and 2102 to have declared void and unconstitutional and in conflict with the equal protection and due process clause of the Fourteenth Amendment of the Constitution of the United States, the provisions of the statutes and Constitution of Louisiana which have the effect of requiring ownership of property and the payment of taxes thereon as a condition of voting in elections as set forth in said statutes.

Appellant further sought an injunction under the provisions of Title 28 of the United States Code, Section 1343 (3), (4), Title 42, United States Code, Sections 1981 through 1985 and under the provisions of Rule 65 of the Federal Rules of Civil Procedure to enjoin the defendants from issuing bonds pursuant to said election of October 24, 1967 and further enjoining the defendants from enforcing, administering or giving any effect to the cited provisions of the Constitution and statutes of Louisiana.

The Trial Court, in a divided opinion, found for the defendants holding that the cited constitutional and statu-

tory provisions of Louisiana were not so arbitrary or irrational as to be in violation of the Fourteenth Amendment of the United States Constitution.

THE QUESTIONS ARE SUBSTANTIAL

The issue involved in this proceeding has not been passed upon by this Court and is of importance to each qualified voter in the United States. It also directly affects the individual states and all county, municipal or other political subdivisions. The issue is directly concerned with the ownership of property as a requirement or condition of voting in a non-tax election, and indirectly is concerned with the just and proper distribution of the tax burden between property owning and non-property owning citizens.

1. Appellant and all other non-property-taxpaying voters, who are otherwise duly qualified and registered and who are residents of the City of Houma, Louisiana, have a proprietary interest in the municipal utility properties owned and operated by the City of Houma and revenues derived therefrom that is equal to the interest of all other resident voters. These utility revenues go into the General Fund of the City of Houma and therefore go towards providing general city services for all citizens. The issuance of the bonds authorized by the abovementioned election held on October 24, 1967 would create a lien and privilege upon the revenues of the utilities owned and operated by the City of Houma. Obviously, all registered voters should have been given an equal opportunity to vote on the proposition submitted. Just as obvious is the fact that the ownership of property and the payment of taxes thereon have no relevancy or reasonable connection with one's ability to vote intelligently on the proposition. Article 14, Section 14, Sub-Section m of the Louisiana

Constitution of 1921, and La. R.S. 33:4251 et seq., and La. R.S. 39:501 et seq., insofar as they set forth the requirement of property ownership and the payment of taxes thereon to vote in a non-tax election, are in violation of the due process and equal protection clause of the Fourteenth Amendment of the Constitution of the United States.

2. Permitting the property owner the exclusive franchise to vote the passage of revenue bonds contemplated in the cited statutes results in a clear invitation to vote favorably upon increasing the General Fund of the municipality while at the same time protecting the favorable low tax rate on his property. This is clearly discriminatory against appellant and members of his class who together represent more than 59% of the registered voters of the City of Houma.

We make special note of the fact that this is a utility **revenue** bond election called and held under the provision of Sub-Part C—Part I, Chapter 10, Title 33 of the Louisiana Revised Statutes (La. R.S. 33:4251-4262). The cited statutes provide that the bonds authorized by this election to be issued may be repaid only or exclusively from the income and revenues derived from the operation of the utility, and therefore, **by said limitation, effectively prohibit the imposition of any taxes, ad valorem or otherwise,** which may be used, in whole or in part, to retire any portion of the bonds. Because of this, a property owner should have no greater stake or interest in this election than a non-property owner as neither his property nor his property rights can in any way be adversely affected by the outcome of this election.

La. R.S. 33:4252 provides that the bonds do not constitute an indebtedness or pledge of the general credit of

the issuing authority. La. R.S. 33:4253 provides that the only security of these bonds is a pledge of the revenues of the utility and does not provide for the mortgaging of any physical assets of the utility or the issuing authority. In the event of default the only recourse is receivership of the utility and payment of the bonds from the revenues derived from the operation of said utility. Palpably, then, the full faith and credit of the issuing authority is in no way at stake.

The case relied upon by appellant as controlling in this instance is the case of *Harper v. Virginia State Board of Elections*, 383 U.S. 663, 86 S. Ct. 1079 (1966). The *Harper* case was concerned with the requirement of the payment of a poll tax as a qualification to vote. This case is concerned with the requirement of the payment of a property tax as a qualification to vote.

In the *Harper* case the Supreme Court concluded that a state violates the equal protection clause of the Fourteenth Amendment of the Federal Constitution whenever it makes the affluence of the voter or the payment of any fee an electoral standard. **"Voter qualifications have no relation to wealth nor to paying or not paying this or any other tax."**

The Court further declared that **". . . we must remember that the interest of the State when it comes to voting, is limited to the power to fix qualifications. Wealth, like race, creed, or color, is not germane to one's ability to participate intelligently in the electoral process. Lines drawn on the basis of wealth or property, like those of race . . . are traditionally disfavored."** (Emphasis ours)

The ruling and reasons of the *Harper* case are applicable here. All qualified voters must have an equal right and opportunity to vote in any election whether it be to

elect a candidate, to adopt a constitutional amendment or to declare on a proposition. No state has the right to impose any qualification or standard which arbitrarily, unfairly or unreasonably discriminates. In the instant case the voter qualification imposed has no relationship to either the intelligent use of the ballot or to the protection of any legitimate interest. The requirement of property ownership and the payment of taxes thereon to vote in elections such as the subject election invidiously allows and invites the property owner to vote himself a lower ad valorem tax rate while imposing the burden of the City's operation on his fellow citizens who are generally of less affluence.

If the objective of debt limitation is desirable as a general proposition, the requirement of property ownership and tax payment thereon as a qualification to vote in a revenue bond election can in no way achieve that objective but in fact militates against the achievement of that objective and actually induces the property owning taxpayer to vote favorably on the revenue issue, with its consequent increase in debt, because of his desire to increase the general revenues of the City from a source other than the property tax, and thereby insuring and protecting his low property tax rate at the obvious expense of the non-property-owning voter.

As a result of the statutes and Trial Court's decision, there is discrimination amongst citizens who have an equal interest in the general revenues of the City and some citizens, without reasonable or rational basis for distinction, are deprived of their right to vote. There is equality of interest amongst all of the citizens of the City of Houma in a revenue bond election and yet there is no equality in voting rights. The degree of this discrimination is neither

minute nor irrelevant. The Supreme Court in the *Harper* case, declared "**. . . to introduce wealth or the payment of a fee as a measure of voter's qualification is to introduce a capricious or irrelevant factor. The degree of the discrimination is irrelevant.**" (Emphasis ours)

3. The majority opinion below made no specific findings of fact relative to the purpose for the distinction between property owners and non-property owners. The District Court erred in surmising as to what might have been the legislative reasons for the distinction without, in any manner, determining or making any finding as to the relevancy of the reasons surmised. As an example, conceding arguendo, that the reasons surmised by the Court were in fact the true legislative intent, what possible relevancy could the fact that a developer may bear the cost of installing the utility service have to the question of relative ability or inability to intelligently vote in the subject election.

CONCLUSION

It is submitted that the District Court erred in finding that there exists a reasonable or rational basis for prohibiting non-property owners from voting in a non-property-tax election.

Respectfully submitted,

KENNETH WATKINS,
415 Goode Street,
Houma, Louisiana
Counsel for Appellant.

CERTIFICATE

I hereby certify that a copy of the foregoing jurisdictional statement has been served on opposing counsel of record by depositing such in the United States Mail, postage pre-paid, addressed to their addresses of record.

Houma, Louisiana, November ____, 1968.

KENNETH WATKINS

APPENDIX A

STATUTES AND CONSTITUTIONAL PROVISIONS

I. LOUISIANA CONSTITUTION OF 1921

Article 14—Parochial and Municipal Affairs

Section 14—Subdivisions of State; creation; indebtedness; Bond issues; special taxes

(m). Revenue bonds; acquisition, etc., of utilities. For the purpose of constructing, acquiring, extending or improving any revenue-producing public utility, the Legislature may authorize municipal corporations to issue bonds secured exclusively, principal and interest, by mortgage on the lands, buildings, machinery and equipment and by pledge of the income and revenues of such public utility. Such bonds shall not be a charge upon the other income and revenues of the municipality and shall not be included in computing the indebtedness of the municipality for the purpose of any limitation herein.

For the purpose of constructing, acquiring, extending or improving any revenue producing public utility, as defined by the Legislature, the Legislature may authorize any political subdivision or taxing district authorized to issue bonds under the authority of this Section 14, excluding municipal corporations, to issue its revenue bonds; which bonds shall be fully negotiable, shall bear interest at a coupon rate not exceeding six per cent per annum, shall mature serially or otherwise not later than forty years from their date, shall not be a charge upon any income or revenue of the district or municipality not derived from the utility, and shall not be included in computing the indebtedness of the subdivision or district, for the purpose of any limitation contained in the Constitu-

tion. The Legislature shall provide that any bonds issued hereunder shall be secured by a conventional mortgage on the entire utility so constructed, acquired, extended or improved, and by pledge of the income and revenues thereof, sufficient in amount to pay principal of and interest on said bonds as they severally mature; which security may be foreclosed by seizure and sale of the encumbered property in the manner provided by law for the foreclosure of conventional mortgages, including the right to executory process, and the Legislature shall provide for the granting of a franchise to the purchaser at foreclosure sale, if any, which franchise shall run for a period not exceeding forty years from the date of such sale and shall be subject to any other constitutional or statutory limitations pertaining to the granting of municipal franchises. The Legislature shall also provide that when bonds are issued hereunder, the issuing subdivision or district must impose rates for the services rendered by the utility fully sufficient to operate and maintain the utility, to pay principal of and interest on the bonds, and to provide an adequate fund for depreciation, improvements and extensions, and provisions may be made for encumbering two or more utilities for the construction, acquisition, extension or improvement of any one or more of the utilities encumbered. The Legislature may, in its discretion, require an election by the tax-paying voters of the subdivision or district as a condition precedent to the issuance of such bonds, in which case the voters' qualifications shall be governed by the provisions of this Section XIV pertaining to other bond elections. If the validity of any bonds issued hereunder be not questioned in litigation commenced within thirty days from the date of publication of the ordinance or resolution authorizing the issuance of such bonds, the authority to issue the bonds, the legality thereof, and the security therefor, shall be conclusively presumed and

no court shall thereafter have authority to inquire into such matters. Any law or laws enacted by the Legislature for the purpose of putting this added paragraph to Subsection (m) into effect and which may have been finally passed by the Legislature after the passage of the joint resolution proposing this amendment and prior to the adoption of said amendment by the electors of Louisiana, shall be valid and fully effective if and when said proposed amendment be adopted.

II. LOUISIANA REVISED STATUTES OF 1950

A. Title 33—Municipalities and Parishes
Chapter 10—Public Utilities
Part I—Ownership, Operation and Financing
SUB-PART C. PLEDGE OF REVENUES OF UTILITY

§ 4251. Bond issue

Any municipal corporation or any parish or any other political subdivision or taxing district authorized to issue bonds under Section 14, Article 14, of the Constitution of Louisiana, all of which are hereinafter in this Sub-part referred to as "municipal corporation" or "municipality" may, in order to construct, acquire, or improve a revenue producing public utility, either within or without its boundaries, obtain funds for the purpose by issuing revenue bonds. For the purposes of this Sub-part, the governing body of the municipal corporation shall be the body empowered to authorize and issue other bonds of the municipal corporation under the provisions of Section 14, Article 14, of the Constitution of Louisiana and Title 39, Subtitle 2, Chapter 4.

§ 4252. Requisites of bonds

Bonds issued under this Sub-part shall be authorized

by resolution of the governing body and shall be payable solely from the income and revenues to be derived from the operation of the utility. The bonds shall not constitute an indebtedness or pledge of the general credit of the municipal corporation within the meaning of any constitutional or statutory limitation of indebtedness and shall contain a recital to that effect. They shall be in coupon form but may be made registerable as to principal if so provided in the resolution authorizing the issuance. The bonds shall be in the denomination of one hundred dollars or a multiple thereof, shall bear interest at a coupon rate not exceeding six per cent per annum, shall mature serially or otherwise in the manner provided by the governing body, but not later than forty years from their date, and shall be made payable at the place provided by the governing body. They may be made redeemable at the option of the issuing municipality prior to maturity at the premium (not greater than ten per cent of the principal amount thereof) which the governing body determines. The bonds shall be signed by the presiding officer and attested by the secretary or clerk of the municipality under the official seal of the municipality, in the manner provided in the resolution authorizing their issuance. Interest coupons to be attached thereto may be executed with the facsimile signature of the officers, and in the event that any officer whose signature appears on the bonds or coupons ceases to hold office before the delivery of the bonds to the purchaser, his signature shall nevertheless be valid and sufficent for all purposes. The bonds shall be sold in the manner and at the times which the governing body determines, except that in no event shall the bonds be sold at a price of less than par or bear an interest rate of greater than six per centum per annum.

§ 4253. Pledge of revenues of utility; receivership

Any bonds issued under this Sub-part shall be payable from and secured by the pledge of the revenues derived from the operation of the utility constructed, acquired, extended or improved with the proceeds thereof, subject only to the prior payment of the reasonable and necessary expenses of operating and maintaining the utility. Any holder of the bonds or of any of the coupons thereto attached may by appropriate legal action compel performance of all duties required of the governing body and officials of the municipal corporation by the provisions of this Subpart. If any bond issued hereunder is permitted to go into default as to principal or interest, any court of competent jurisdiction may pursuant to the application of the holder of the bond, appoint a receiver for the utility, which receiver shall be under the duty of operating the utility and collecting and distributing the revenues thereof pursuant to the provisions and requirements of the resolution authorizing the bonds.

If more than one series of bonds is issued hereunder payable from the revenues of any utility, priority of lien on such revenues shall depend on the time of delivery of the bonds, each series enjoying a lien prior and superior to that enjoyed by any series of bonds subsequently delivered, except that where provision is made in the proceedings authorizing any issue or series of bonds for the issuance of additional bonds in the future on a parity therewith pursuant to procedure or restrictions provided in such proceedings, additional bonds may be issued in the future on a parity with such issue or series in the manner so provided in such proceedings. (As amended Acts 1955, No. 72, § 1; Acts 1956, No. 17, §1.)

§ 4254. Bonds to constitute negotiable instruments

All bonds issued under the provisions of this Sub-part shall constitute negotiable instruments within the meaning of the negotiable instruments law.

§ 4255. Sinking fund

Any resolution authorizing the issuance of bonds hereunder shall provide for the creation of a sinking fund into which shall be paid from the revenues of the utility, subject only to prior payment of the reasonable and necessary expenses of operating and maintaining the utility, sums fully sufficient to pay the principal and interest of the bonds, and to create such reserve for contingencies as may be required by the resolution. The moneys in the sinking fund shall be applied to the payment of interest on and principal of the bonds or to the purchase or retirement of the bonds prior to maturity in the manner provided in the resolution.

The resolution authorizing their issuance may contain such covenants with the future holder of the bonds as to

(1) the management and operation of the utility,

(2) the imposition and collection of fees and charges for the products, commodities or services furnished thereby,

(3) the disposition of such fees and revenues,

(4) the issuance of future bonds and the creation of future liens and encumbrances against the utility and the revenues thereof,

(5) the carrying of insurance on the properties constituting the utility,

(6) the disposition of the proceeds of any such insurance, and

(7) other pertinent matters, deemed necessary by the governing body to assure the marketability of the bonds, provided such covenants are not inconsistent with the provisions of this Sub-part.

§ 4256. Charges for commodities or services provided by utility

When any municipality has issued bonds and has pledged the revenues of any utility for the payment thereof as herein provided, the municipality shall impose and collect fees and charges for the products, commodities and services furnished by the utility, including those furnished to the municipality itself and its various agencies and departments, in such amounts and at such rates as shall be fully sufficient at all times to (1) pay the expenses of operating and maintaining the utility, (2) provide a sinking fund sufficient to assure the prompt payment of principal of and interest on the bonds as each falls due, (3) provide such reasonable fund for contingencies as may be required by the resolution authorizing the bonds, and (4) provide an adequate depreciation fund for repairs, extensions and improvements to the utility necessary to assure adequate and efficient service to the public. No board or commission other than the governing body of the municipality shall have authority to fix or supervise the making of these fees and charges.

§ 4257. Property of two or more utilities may be pledged

The governing body of the municipality may authorize bonds under this Sub-part payable from the revenues to be derived from two or more utilities owned and operated by the municipal corporation (whether or not such utilities are related or used in conjunction) for the purpose of constructing, acquiring, extending or improving any one or more of the utilities.

§ 4258. Election to authorize issuance of bonds

Before the resolution authorizing the issuance of bonds under this Sub-part is adopted by the governing body, the question of the issuance of the bonds shall be submitted to and approved by votes of a majority in number and amount of the property taxpayers who vote at an election held hereunder. The proposition may be submitted at either a special or general election and all matters pertaining thereto, including the qualifications of voters and the manner of calling and conducting the election and canvassing and promulgating the results thereof, shall be governed by the provisions of Chapter 4, Sub-title 2, Title 39.

§ 4259. Refunding bonds

The governing body of any municipality which has heretofore issued or hereafter issues bonds payable from utility revenues under the provisions of this Sub-part or any other law may authorize the issuance of bonds for the purpose of refunding, extending and unifying the whole or any part of the principal, interest and redemption premiums on the outstanding bonds. The refunding bonds may either be sold and the proceeds applied to or deposited in escrow for the retirement of the outstanding bonds, or may be delivered in exchange for the outstanding bonds. The refunding bonds shall be authorized in all respects as original bonds are herein required to be authorized, except that no election shall be necessary in the event the refunding bonds are sold at public sale after advertisement in the manner provided by R.S. 39:570 and the annual principal and interest on the refunding bonds is less than the combined annual principal and interest on the bond issue or issues being so refunded, extended and unified. The governing body, in authorizing the refunding bonds, shall provide for the security of the bonds, the sources from which the bonds are to be paid and for the

rights of the holders thereof in all respects as herein provided for other bonds issued under the authority of this Sub-part. The governing body may also provide that the refunding bonds shall have the same priority of lien on the revenues pledged for their payment as was enjoyed by the bonds refunded. (As amended Acts 1962, No. 224, § 1.)

§ 4260. Contesting election and bonds; prescription

For a period of sixty days from the date of the promulgation of the result of any election held hereunder, any person in interest may contest the legality of the election, after which time no one shall have any cause of action to contest the regularity, formality or legality of the election for any cause whatever, it shall be conclusively presumed that every legal requirement has been complied with, and no court shall have authority to inquire into such matters after the lapse of sixty days. The resolution authorizing the issuance of bonds shall be published once in a newspaper published in the municipality, or if no newspaper is published therein, then in a newspaper published in the parish in which the municipality is located, or if no newspaper is published in the parish then in a newspaper published in an adjoining parish. For a period of thirty days from the date of the publication any person in interest may contest the legality of the resolution and of the bonds to be issued pursuant thereto and the provisions securing the bonds. After the expiration of thirty days no one shall have any right of action to contest the validity of the bonds or the provisions of the resolution pursuant to which the bonds were issued, and all the bonds shall be conclusively presumed to be legal, and no court shall thereafter have authority to inquire into such matters.

§ 4261. Service charge for sewerage and garbage facilities

Where the revenues pledged to the payment of bonds

under this Sub-part are revenues of a utility comprised of sewerage facilities, or garbage facilities, the governing authority of the municipality may each year impose against the owners of all real property in the municipality a service charge for the facilities afforded by the utility, which charge shall not be a lien upon the property. The charges shall be sufficient to provide for the cost of operating and maintaining the utility and paying the interest and principal of the bonds secured by the revenues of the utility. No charges shall be made against the owner of any property which is not benefited by the utility. A list of the names of all owners against whom charges are so made and the amounts of the charge made against each owner shall be certified by the governing authority to the official charged with the assessment of taxes against the property at such time and in such manner in each year as to permit the amount of the charge to be carried upon the assessment roll of the real property in the municipality. Each charge shall be carried on the roll as a special item due by the owner of the property individually and shall be identified on the roll as "Special Sewerage or Garbage Charge of ———— (inserting the name of the municipal corporation)". The charges shall be paid to the official who collects the general taxes assessed against the real property located in the municipality, and shall be paid at the same time and in the same manner as the general taxes are paid. Where the ownership of any real property changes, the municipality may require any subsequent owner seeking sewerage or garbage service to apply therefor, whereupon the charges imposed against the owner shall be assessed and collected in the manner hereinabove provided. The municipality may pay the tax collecting official the same commission on the amounts collected by him as he receives for the collection of ad valorem taxes, and may pay the assessing official a sum sufficient to re-

imburse him for additional expenses occasioned by reason of listing the charges on the assessment roll. The amounts to be paid to the assessor and collector shall be considered one of the costs of operating and maintaining the utility.

§ 4262. No restriction of acts authorized

This Sub-part shall constitute full authority for the accomplishment of all acts herein authorized to be done. No other law restricting the carrying out of the acts authorized to be done shall be construed as applying to any proceedings had or acts done pursuant to this Sub-part.

B. Title 39—Public Finance

Chapter 4—Bonded Indebtedness and Special Elections

PART II. ELECTIONS

§ 501. Elections

Except as otherwise provided in special cases, no subdivision may incur any debt, issue any bonds, levy any special tax, or assume any indebtedness unless it has been authorized by vote of a majority in number and amount of the property taxpayers qualified to vote under the constitution and laws of this state who vote at an election hereunder. The governing authority of any subdivision may call a special election for any of these purposes at any time; and it shall call an election for any of these purposes when requested so to do by the petition in writing of one-fourth of the property taxpayers eligible to vote at the election.

§ 502. Resolution calling election

The election shall be ordered by resolution which shall state the purpose for which it is called.

If the proposition is to incur debt and issue negotiable bonds under Part III of this Chapter,[1] the purpose

for which the debt is to be incurred, the amount of the debt, the number of years for which the bonds are to run, and the maximum rate of interest to be paid shall be stated.

If the proposition is to levy a special tax under Part IV of this Chapter,[2] the rate, object, and purpose for which the tax is to be levied, and the number of years it is to run must be stated. ([1]R.S. 39:551—39:670. [2]R.S. 39:701—39:706.)

§ 503. Notice of election

Notice of the election shall be given embracing substantially all matters required to be set forth in the resolution ordering the election, and shall set forth further that the authorities ordering the election will, in open session, at an hour and place named, proceed to open the ballot boxes, canvass the returns and declare the result. The notice shall be published for thirty days in a newspaper published in the subdivision; or if there is no newspaper published therein, in a newspaper published in the parish; or if there is no newspaper published in the parish, in a newspaper published in an adjoining parish, and by posting in three public places in the subdivision ordering the election. Four publications in a newspaper once a week, shall constitute a publication for thirty days; provided thirty days intervene between the date of the first publication and the date of the election.

§ 504. Polling places; ballots

The governing authority ordering the election, shall designate the polling places; provide the ballot boxes; ballots; valuations of property and compiled statement of the voters in number and amount, and fix the compensa-

tion of the election officers. It shall appoint for each polling place, three commissioners and one clerk of election, all of whom shall be registered voters.

§ 505. Election officers; substitutes

If any commissioner or clerk of election is unable, or if he fails or neglects to attend or serve at the polling place designated, at the hour fixed for opening, or within one hour thereafter, the commissioners present shall appoint, or in the absence of all commissioners the voters present shall elect the necessary number of commissioners and clerks, who shall have the same powers, compensation and duties, as other commissioners and clerks and shall serve in the place and stead of the absentee or delinquent appointees.

§ 506. Election officers; oaths

Commissioners and clerks of elections, before opening the polls, shall be sworn to perform all the duties incumbent on them as such, the oath to be taken before any officer authorized to administer oaths, or by the clerk, and each commissioner before any other commissioner. The commissioners of election may administer any oath and receive any affidavit provided for in this Chapter.

§ 507. Penalty for violations

The commissioners and clerks of elections held under the provisions of this Chapter shall have the same powers and duties in conducting the elections and in preserving order at the polls as are conferred and imposed upon similar officers under the general election laws of this state. Whatever is declared in the general election laws to be a felony, other crime or misdemeanor, shall be the same for

any election held under the provisions of this Chapter and shall be punished in the same manner.

Any wilful failure or neglect to comply with the requirements of this Chapter or any wilful violation by any officer, agent or employee of any subdivision, availing itself of the provisions of this Chapter, shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars or by imprisonment not exceeding one year, with or without hard labor, or by both fine and imprisonment.

§ 508. Qualifications of voters

Only property taxpayers qualified as electors under the constitution and laws of this state are entitled to vote in any election held under the provisions of this Part. The qualifications of taxpayers as voters are those of age, residence, and registration as voters, without regard to sex. There shall be no voting by proxy.

With reference to Part IV of this Chapter, if the limits and boundaries of any municipal corporation has been extended and the assessment roll that is to include the property in the extended limits has not already been made for the municipal corporation, those who have become property taxpayers by the extension of the limits and who are otherwise qualified to vote shall be permitted to vote in the election and the assessed valuation of their property shall be ascertained by reference to the last assessment roll of the parish. (1R.S. 39:701-39:706.)

§ 509. Use of tax receipts

A. In all elections held under the provisions of this Part and in all other elections whatsoever held under any other laws of this state where the only question submitted

is the incurring of debt and issuing of bonds or other evidences of debt and/or the question of levying special taxes, the voter shall use his tax receipt as obtained from the tax collector's office in determining the amount of assessment that shall be voted.

B. The registrar of voters shall furnish to the election commissioners appointed to hold such election the precinct binders showing those eligible to vote in said election. A taxpayer entitled to vote in said election shall present to the commissioners of election his tax receipt with the valuation of such taxpayer's property as shown by the assessment roll last made and filed prior to such election; provided, however, that when it is impossible for any taxpayer to present his tax receipt to show the valuation of his property, he shall be permitted to vote by the use of the copy of the tax receipt, which the commissioners shall find in the precinct binders. In case of loss of the original tax receipt and copy thereof, the commissioners of election may receive affidavits of such taxpayer's right to vote and of the proper assessed valuation of his property, which affidavits shall be attached to such taxpayer's ballot.

C. The tax collector in each of the sixty-four parishes shall make tax receipts for each taxpayer at the time the taxes are paid. Such tax receipts shall be made in a minimum of an original and three copies. The original shall go to the taxpayer and one copy to the registrar of voters, which shall be placed in the proper precinct binder and forwarded to the polls on election day. The additional copies shall be for the use of the tax collector.

D. Notwithstanding any provision of any law to the contrary, the provisions of this Section, with regard to the use of tax receipts shall be applicable at each election in this state in which there is submitted to the qualified prop-

erty taxpayer of any area of the state the question of incurring debt and issuing bonds or other evidences of debt therefor or the question of levying any tax. (As amended Acts 1964, No. 399, § 2; Acts 1966, No. 500, §§ 2, 3.)

§ 510. Challenging votes

If the vote of any taxpayer is challenged, the commissioners of election shall permit him to vote and shall receive in writing the grounds of challenge signed by the challenger, together with the challenged taxpayer's statement of his asserted right to vote and the challenge and statement shall be attached to the ballot.

§ 511. Form of ballot

If more than one proposition is submitted at the same special election, each proposition shall be so submitted as to enable the voter to vote thereon separately. The ballots to be used at special elections shall be in substantially the following form:

A. FOR THE INCURRING OF BONDED INDEBTEDNESS

Shall .....

(Name of Subdivision)

incur debt and issue bonds to the amount of.....

..... YES

Dollars,

to run ..... years,

from date thereof, with interest, at the maximum rate

of .....

per cent per annum for the purpose of.....

..... NO

Taxable valuation $.....

.....

(Signature of Voter)

Notice to Voters: To vote in favor of the proposition submitted on this ballot, place a cross (X) mark in the square after the word "YES"; to vote against it, place a similar mark after the word "NO".

B. FOR THE LEVYING OF A TAX

Proposition to levy a .....

(Rate)

mill

tax on all the property subject to State taxation

in ..... YES

(Subdivision)

for the period of .....

(Term)

for the purpose of .....

..... NO

(Here state the purpose of the tax)

Taxable valuation $ .....

.....

(Signature of Voter)

Notice to Voters: To vote in favor of the proposition submitted upon this ballot place a cross (X) mark in the square after the word "Yes"; to vote against it place a similar mark after the word "No".

§ 512. Voting

Each voter's name shall be written on his ballot. The commissioners of election shall receive the ballot of each

voter, check his name on the list of voters furnished by the registrar, enter and number his name on the list of taxpayers voting, and immediately deposit his ballot in the ballot box, reserving to each voter the right to so fold his ballot that it shall not be known at the time of voting whether he voted for or against the proposition or propositions submitted. If the election is being held in a parish where the permanent registration laws are in force, the procedure in connection with the precinct registers shall be the same as that provided for in Part X of Chapter 1 of Title 18 of the Louisiana Revised Statutes of 1950.[1] (As amended Acts 1964, No. 399, § 2.) ([1]R.S. 18:231 et seq.)

§ 513. Opening and closing polls

The polls shall open on the day appointed, at seven o'clock a. m., and remain open until and not later than six o'clock p. m. No election shall be vitiated by a failure to open the polls at the time prescribed, or by closing before the time prescribed, unless on a contest, it be established that voters were thereby deprived of votes sufficient in number and amount to have changed the result of the election.

§ 514. Counting ballots; precinct registers

A. Immediately after the closing of the polls, the commissioners shall, in the presence of the bystanders, open the ballot boxes; count the ballots found there; check the same with the list of voters; proceed to count the votes in number and amount; keep tally sheets in duplicate showing the votes in favor of and against the proposition or propositions submitted, and showing the valuation of property in favor of and against same; and make compiled statements in duplicate of the vote in number and amount, both in favor of and against each proposition or propositions.

B. After swearing to the correctness of the numbered list of voters, the duplicate tally sheets and duplicate compiled statements, the commissioner shall deposit the ballots, the registrar's list of voters, the numbered list of taxpayers voting, one duplicate tally sheet, and one duplicate compiled statement, in the ballot box, immediately seal the ballot box and, within forty-eight hours after the closing of the polls, deliver the sealed ballot box with its contents to the authorities ordering the election. Within the same period they shall deliver the duplicate tally sheet and the duplicate compiled statement to the clerk of the district court of the parish in which the election was held, who shall file them in his office. If the election is being held in a parish where the permanent registration laws are in force, the procedure in connection with the precinct registers shall be the same as that provided for in Part X of Chapter 1 of Title 18 of the Louisiana Revised Statutes of 1950.[1]

C. If the election commissioners on counting the ballots find that they do not correspond with the list of voters, they shall, before examining and counting the ballots, examine them for the purpose of finding the discrepancy and if it should be found that any ballots have been duplicated they shall be destroyed or, if it be found that the name of a voter has been omitted from the list of persons voting, it shall be added to the list. (As amended Acts 1964, No. 399, § 2.) ([1]R.S. 18:231 et seq.)

§ 515. Canvass of returns

On the day and at the hour and place named in the notice of election, the authorities ordering the election shall in public session open the ballot boxes, examine and count the ballots in number and amount, examine and canvass the returns, and declare the result of the election. The result shall be promulgated by publication in one issue of a

newspaper published in the subdivision, or if there is none, in a newspaper published in the parish, or if there is none published in the parish, in the newspaper published in an adjoining parish.

§ 516. Process verbal

The authority ordering the elections shall keep a proces verbal of the canvass and shall forward a copy to the Secretary of State, who shall record it; another copy to the clerk of the district court, who shall record it in the mortgage records; and the remaining copy shall be retained in the archives of the office of the authority ordering the election.

§ 517. Preservation of ballots

The custodian of the archives or records of the authority ordering the election shall preserve for a term of three months from the date of the promulgation of the election, the ballots and other returns.

§ 518. Contests

For a period of sixty days from the date of promulgation of the result of any election held under the provisions of this Part, any person in interest may contest the legality of the bond issue provided for, the tax authorized or the assumption of debt provided for any cause, after which time, no one may contest the legality, formality or regularity of the election or debt assumption for any cause whatsoever. If the validity of any election is not raised within the sixty days herein prescribed, the authority to issue the bonds, and to levy the tax, or assume the debt and the regularity thereof, shall be conclusively presumed, and no court shall have authority to inquire into such matters.

With reference to Part III (A)[1] of this Chapter, if any resolution adopted or proceeding had more than thirty days

after the promulgation of the result of the election, no contest, action or proceeding to question the validity or legality of the resolution or proceeding so adopted shall be begun in any court by any person for any cause whatsoever, after the expiration of thirty days from the date when the resolution was adopted or proceeding had. ([1]R.S. 39:551-39:578.)

APPENDIX B

OPINION AND JUDGMENT BELOW

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

CIVIL ACTION
NO. 67-1853
SECTION "C"

JOSEPH Q. CIPRIANO,
Plaintiff,

versus

CITY OF HOUMA, G. LESLIE BROUSSARD, Mayor, CHRISTIAN L. OLIVIER, CHARLES DAVIDSON, PETER BOURGEOIS, JR., SAMUEL LUSCO and WILBERT P. BONVILLIAN,
Defendants.

Before JOHN MINOR WISDOM, Circuit Judge, and ALVIN B. RUBIN and JAMES A. COMISKEY, District Judges.

ALVIN B. RUBIN, District Judge:

A resident of the City of Houma, Louisiana, has brought a class action seeking an injunction to prevent the City from issuing utility revenue bonds approved by a vote of the property taxpayers at a special election. In addition, he seeks a judgment declaring that the provisions of Louisiana law under which the election was held violate the federal constitution. The plaintiff is a qualified voter, but not a property owner. He contends that he and the other members of the class of resident voters who do not

own property in Houma have a proprietary interest in the municipal utility properties and that, since the Louisiana constitution and statutes permit only qualified resident voters who are property owners to participate in the election, they have been denied due process and equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

The Louisiana constitution imposes limitations on the amount of debt a municipality may incur.[1] But in Louisiana, as in other states, these limitations apply only to debt that constitutes a general obligation of the municipality; debt that is a charge only on a special fund is not subject to the limitation.[2] Article XIV, Section M, of the Louisiana Constitution is typical of the provisions relative to such special funds: it provides that the legislature may authorize municipal corporations to issue bonds for the purpose of constructing, acquiring, extending, or improving any revenue producing public utility if the bonds are secured exclusively by a mortgage on the assets of the utility system and a pledge of its revenues, but that these bonds may not be a charge on the other public income and revenues of the municipality.[3]

Acting under this authority, the Louisiana legislature empowered municipal corporations to issue public utility revenue bonds for the purposes permitted by the constitu-

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[1] LSA-Const. Art. 14, § 14(f).

[2] The provisions limiting municipal indebtedness had their origin in the latter half of the 19th Century. Seeking to attract railroads, communities issued bonds and bought railroad stock with the proceeds. The depression of the 1870's rendered most of the stock worthless. Corrupt municipal administration also resulted in indiscriminate issuance of bonds to cover the cost of projects of questionable value. See generally in this regard, De Torres, Financing Local Government 26-27 (1967). See also Fowler, Revenue Bonds 46 (1938); Lutz, Public Finance 594 (1924); McDonald, American City Government and Administration, 406 et seq. (1955).

[3] Article XIV, Section 14(m) provides expressly that bonds of this nature "shall not be included in computing the indebtedness of the municipality for the purpose of any limitation herein."

tional provision.[4] The bonds must be authorized by a resolution of the municipal governing body.[5] As the Louisiana constitution requires, they must be payable solely from the revenues of operating the utility system, and they may not constitute an indebtedness or pledge of the general credit of the municipality.[6] Before the resolution authorizing the issuance of bonds may be adopted by the governing body, the question whether the bonds should be issued must be submitted to and approved by the votes of a majority in number and amount of the property taxpayers.[7]

The procedure contemplated by the Louisiana statutes was followed by the City of Houma. The Mayor and Board of Aldermen, the duly elected municipal governing body, adopted a resolution calling a special election. The election was held, and the bond issue was approved. The City applied to the State Bond and Tax Board for consent and authority to issue and sell the bonds.[8] Before they can be sold, it will be necessary for the municipal governing body to adopt a resolution for the issuance and sale of the bonds.[9]

While the plaintiff contends he was denied due process of law, he does not seriously press the claim. His real complaint is denial of equal protection of the laws, and he relies entirely upon *Harper v. Virginia State Board of Elections*, 1966, 383 U.S. 663. In *Harper* the United States Supreme Court held that the Equal Protection Clause of the Fourteenth Amendment prevents a state from exacting a poll tax as a condition of the right to vote in state elections.

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[4] LSA-R.S. 33:4251.

[5] LSA-R.S. 33:4252.

[6] *Ibid.*

[7] LSA-R.S. 33:4258. The election is also contemplated by the Louisiana constitution, Art. XIV, § 14(m), which provides, "The Legislature may, in its discretion, require an election by the tax-paying voters of the subdivision or district as a condition precedent to the issuance of such bonds. . . ."

[8] LSA-R.S. 39:871; 47-1803-1804.

[9] LSA-R.S. 33:4252; see LSA-R.S. 33:4258.

Mr. Justice Douglas reasoned that, "[O]nce the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment." Id. at 665. A state "violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard." Id. at 666.

But this sweeping proposition is not decisive here. The Equal Protection Clause does not command state legislatures to make their laws conform to hydraulic principles by seeking the common—and lowest—level. "Equal protection does not require identity of treatment. It only requires that classification rest on real and not feigned differences, that the distinction have some relevance to the purpose for which the classification is made, and that the different treatments be not so disparate, relative to the difference in classification, as to be wholly arbitrary." *Walters v. City of St. Louis*, 1954, 347 U.S. 231, 237. In considering whether a classification rests on a real difference, we must take into account the nature and the relative importance of the subject with respect to which equality is asserted. "Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized." *Reynolds v. Sims*, 1964, 377 U.S. 533, 561-562.

But "the Equal Protection Clause is not shackled to the political theory of a particular era,"[10] not even the one in vogue at present. It does not forbid the states to fix

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[10] *Harper v. Virginia State Board of Elections*, 1966, 383 U.S. 663, 669.

voter qualifications; it only, as *Harper* puts it, prevents them "from fixing voter qualifications which inviduously discriminate."[11] For "[t]here can be no doubt either of the historic function of the States to establish, on a nondiscriminatory basis, and in accordance with the Constitution, other qualifications [than residence] for the exercise of the franchise."[12] *Harper* holds merely that equal protection is denied when a state levies a poll tax. It does not declare that the Fourteenth Amendment abrogates the power of the states to classify voters.

Mere classification does not of itself deprive a group of equal protection.[13] Older decisions taught us that legislation that differentiates between two classes is unconstitutional only if the discrimination is irrational, arbitrary or capricious.[14] Only a few weeks ago, the Supreme Court indicated that these principles are still vital. In holding that the one man, one vote principal of *Reynolds v. Sims* was applicable to the selection of Texas County Commissioners it said, "The Equal Protection Clause does not, of course, require, that the State never distinguish between citizens, but only that the distinctions that are made not be arbitrary or inviduous." *Avery v. Midland County Texas*, 36 U.S.L.W. 4257 (U.S. April 1, 1968), ____ U.S. ____.[15]

Unlike the poll tax rejected in *Harper*, the Louisiana statute attacked here does not limit suffrage in an election held to vote for political representatives or general governmental purposes. It deals solely with a vote on the issuance

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[11] *Id.* at 666.

[12] *Carrington v. Rash*, 1965, 380 U.S. 89, 91.

[13] *Williamson v. Lee Optical of Oklahoma*, 1955, 348 U.S. 483; *Carrington v. Rash*, 1965, 380 U.S. 89.

[14] *Bayside Fish Flour Co. v. Gentry*, 1936, 297 U.S. 422, 429; *Arkansas Natural Gas Co. v. Arkansas R.R. Comm.*, 1923, 261 U.S. 379, 384; Cox, Constitutional Adjudication and the Promotion of Human Rights, 80 Harv. L. Rev. 91, 94-95 (1966).

[15] See also *Dusch v. Davis*, 1967, 387 U.S. 112.

of municipal revenue bonds. The test to be applied is whether the distinction drawn between resident voters who are property owners and resident voters who do not own property is so arbitrary or invidious as to deny equal protection of the laws to the resident who does not own property. This can not be settled by resort to generalizations that would apply the same criteria to every ballot on every subject just because it is a ballot. Whether the distinction is invidious depends on the exact factual situation presented.

Before a utility revenue bond can be issued under the Louisiana constitutional and statutory plan, the property owners election must be authorized by an elected governmental body. The plaintiff has full suffrage in the election of this municipal governing body, as well as in the election of the Louisiana legislature. The property owners election called by the municipal governing body can only approve or disapprove the issuance of bonds. If it disapproves, its veto is decisive. But even if it approves, the municipal governing body has the final decision on whether the bonds should be issued.[16]

The election to approve the issuance of the bonds is not an election for general governmental purposes. It concerns the administrative functions of the municipality. This type of distinction has been considered important in determining what is required to afford equal protection to voters. See *Sailors v. Board of Education of County of Kent*, 1967, 387 U.S. 105.

The question here is not whether all voters resident in a municipality are equally qualified to vote on the issuance of utility bonds, nor whether they are all equally concerned with municipal utility services, nor whether they pay utility bills just like property owners, nor whether the people

[16] See, e.g., The Wall Street Journal, vol. XLI, no. 101 (Wednesday, May 22, 1968), p. 21, cols. 1 & 2.

of Louisiana in adopting their Constitution, or the Legislature of Louisiana in enacting its statutes have acted wisely in determining that only property owners can veto the issuance of revenue bonds. It is whether Louisiana's plan of governmental action is arbitrary or invidious with respect to the resident voter who owns no property. In deciding how they would authorize revenue bonds to be issued, Louisianians might have supposed, perhaps erroneously but without being irrational, that property owners by and large have a greater and more permanent economic stake in the community than non-property owners; that the values of property might be more directly affected by the quality and cost of utility service; that the success of a municipal utility system might yield funds for general municipal operation, relieving property owners of some of the burden otherwise borne by ad valorem taxes, while the failure of such a system might impair the credit of the municipality even though the bondholders have no claim to its funds. They might have recalled that in many cases the cost of installing utility services have been directly borne by subdividers of property.[17] They might have thought that property owners could better take into account such questions involved in utility operation as valuation of property, acquisition of rights of way, and durability of construction. In all of these matters, their conclusion might be different from the ones we ourselves would reach, and the conclusion might be one that cannot be scientifically established or proved by a preponderance of the evidence. But the question is not whether they are right, but merely whether they are so wrong as to be irrational.

As *Sailors* recognized, "Viable local governments may need many innovations, numerous combinations of old and new devices, great flexibility in municipal arrangements to meet changing urban conditions. We see nothing in the

[17] E.g., Code of Ordinances, Jefferson Parish, Louisiana, § 18-11.

Constitution to prevent experimentation." 387 U.S. at 110-111.

There is no one light to kindle in state and municipal fiscal matters. Indeed, beset as state and local governments are by financial problems,[18] it may be that the gloom is impenetrable. But the legislatures of some states think that giving property owners the right to veto the issuance of revenue bonds serves as a wise fiscal restraint.[19] We cannot say that this conclusion is based on a distinction between those who own property and those who do not that is irrational, arbitrary or invidious. Those who, like the plaintiff, consider the Louisiana legislative provisions unwise have their general franchise unimpaired; they may seek to elect representatives who will vote for what they consider a better method of authorizing the issuance of revenue bonds.

In *Kramer v. Union Free School District No. 15*, 2 Cir., 1967, 379 F. 2d 491, Judges Kaufman and Hays held that a three-judge court should be convened to hear a case in which a bachelor who was not a property owner contended that he was deprived of equal protection by a New York statute that permitted only property owners, parents of students or persons who stood in loco parentis to students to vote in school board elections. Judge Lumbard considered the claim "so patently without any merit" that he dissented. In doing so he observed:

> ". . . [T]he franchise in local elections concerning, for example, water supply, sanitation removal, fire protection, and the operation of parks and schools is very commonly limited to those who use and/or pay for the services. And such limitations have a readily apparent and rational basis, the greater con-

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[18] See, e.g., The State of the States: Troubled, *Newsweek* (January 31, 1966), pp. 19-20.

[19] See, e.g., Texas Const., Art. VI, § 3a; *City of Richmond v. Allred, Tex.*, 1934, 71 S.W. 2d 233; Utah Const., Art. XIV, § 3.

> cern and awareness of those who use and pay for such services, for which there is no analogue when voting in a statewide legislative election is conditioned upon payment of a poll tax." 379 F. 2d at 497 (footnote omitted).

And he commented further,

> "[T]he salient vice of a restriction upon voting in statewide elections is that it tends to perpetuate itself by denying those it disadvantages any opportunity to remove it through democratic processes. See The Supreme Court, 1965 Term, 80 Harv. L. Rev. 91, 180 n. 23 (1966). By contrast, plaintiff can seek to have his exclusion from the school district franchise repealed by the New York legislature, for which his vote is unimpaired." *Ibid.*

Even when considering whether a state statute prohibiting the sale of obscene publications to juveniles impairs the right to free speech, the test of validity is not whether judges agree with state legislatures or whether the legislative findings express "an accepted scientific fact." For "[t]o sustain state power to exclude material defined as obscenity . . . requires only that we be able to say that it was not irrational for the legislature to find that exposure to material condemned by the statute is harmful to minors." *Ginsberg v. New York*, 36 U.S.L.W. 4295 (U.S. April 22, 1968), ... U.S. ..... "We do not demand of legislatures a 'scientifically certain criteria of legislation.'" *Ibid.*

If the federal system is to continue, the states must be free, within the limits of rationality, to adopt their own solutions to their own problems, to experiment even if their experiments sometimes fail. The courts are not a collective omniscent father who always knows best. The Constitution ordains a rule of reason, not a strait jacket of egalitarianism. It must allow that latitude that is essential to the experimentation, development and change needed by a na-

tion composed of fifty different states and thousands of stated-created political subdivisions. The measures adopted by Louisiana to meet its own notions of how its people should determine the desirability of issuing public utility revenue bonds are neither so arbitrary or irrational as to bring down the stricture of the Fourteenth Amendment. Judgment will therefore be entered for the defendant.

UNITED STATES CIRCUIT JUDGE

/s/ ALVIN B. RUBIN
UNITED STATES DISTRICT JUDGE

/s/ JAMES A. COMISKEY
UNITED STATES DISTRICT JUDGE

New Orleans, Louisiana.
July 15th, 1968.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

SECTION "C"

NO. 67-1853

CIVIL ACTION

JOSEPH Q. CIPRIANO

versus

CITY OF HOUMA, G. LESLIE BROUSSARD, Mayor, CHRISTIAN L. OLIVIER, CHARLES DAVIDSON, PETER BOURGEOIS, JR., SAMUEL LUSCO and WILBERT P. BONVILLIAN

JUDGMENT

Considering the written opinion of the Court on file herein, the dissenting opinion of Judge Wisdom, and considering the direction of the Court as to entry of judgment;

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of defendants, City of Houma, G. Leslie Broussard, Mayor, Christian L. Olivier, Charles Davidson, Peter Bourgeois, Jr., Samuel Lusco and Wilbert P. Bonvillian, and against plaintiff, Joseph Q. Cipriano, dismissing said plaintiff's suit with costs.

New Orleans, Louisiana, this 23 day of July, 1968.

/s/ JOHN MINOR WISDOM
UNITED STATES CIRCUIT JUDGE

/s/ ALVIN B. RUBIN
UNITED STATES DISTRICT JUDGE

/s/ JAMES A. COMISKEY
UNITED STATES DISTRICT JUDGE

APPENDIX C

DISSENTING OPINION

CIVIL ACTION
NO. 67-1853
SECTION "C"

JOSEPH Q. CIPRIANO,
Plaintiff,

versus

CITY OF HOUMA, G. LESLIE BROUSSARD, Mayor, CHRISTIAN L. OLIVIER, CHARLES DAVIDSON, PETER BOURGEOIS, JR., SAMUEL LUSCO and WILBERT P. BONVILLIAN,
Defendants.

WISDOM, dissenting.

I respectfully dissent.

I consider that *Harper v. Virginia State Board of Elections*, 1966, 383 U.S. 663, 86 S. Ct. 1079, 16 L. Ed. 2d 169, controls the case before this court.

In *Harper* the Supreme Court found that "voter qualifications have no relation to wealth nor to paying or not paying this [poll tax] or any other tax". 383 U.S. 666. It is true that the tax itself was attacked in *Harper* and that a poll tax is a qualification limiting suffrage in an election to vote for political representatives. Here the qualification limiting voting to resident property taxpayers applies to a vote on the issuance of municipal revenue bonds. I recognize the differences in the two situations. But the basic similarity is more important than the differences. The common fact in both situations is that eligibility to

vote rests on payment of a tax. But all citizens have a stake in government—federal, state, or local government—regardless of ownership of property as evidenced by payment of a tax. This interest entitles each citizen to a voice in all elections in his city or state. As the Court said in *Harper*, "Wealth, like race, creed, or color, is not germane to one's ability to participate intelligently in the electoral process. Lines drawn on the basis of wealth or property, like those of race . . . are traditionally disfavored". 383 U.S. at 666. Here, in a bond election, a citizen's lack of ownership of taxed real estate is not proof positive of his lack of interest in his city's going into the utility business.

As my brother Rubin ably analyzes the issues, the case is not one to be settled by broad generalities. The issues reduce to the question whether the distinction between property owners and non-property owners is rational or arbitrary in fixing the qualifications for voting on the desirability of a city's issuing revenue bonds to acquire and operate a public utility. The city has the legal authority to issue such bonds, even without asking the advice of any of its electors, but if a city should in advance of issuance of revenue bonds ask for the approval of its citizens the equal protection clause prohibits the city's arbitrarily excluding from the election interested citizens.

Houma has a population of 35,000. As of October 24, 1967, there were 11,606 registered voters. Only 4,680 were taxpayers owning property and the total assessed value of their property was only $5,988,627. Thus forty per cent of the resident voters owning taxed property constituted a class controlling the interests of *all* the citizens of Houma in the policy decision submitted to the voters in the bond election. 1,828 voters representing an assessed valuation of $2,736,258 voted in favor of issuance of the bonds; 896

representing an assessed valuation of $1,108,268 voted against the bond issue.

As citizens of Houma, non-property residents have the same proprietary interest in municipal properties as resident taxpayers. They have the same interest in the administration of city affairs. And they are no less interested in the amount of their light bills than are property-owners. Indeed, since they constitute sixty percent of Houma's electors, they have a greater aggregate of interests than the property owners have in municipally owned utilities.

In the case before us; the discrimination against citizens not owning taxed property is exacerbated by the fact that the bonds are revenue bonds. The bonds are to be paid only from the operations of the utility; they are not a charge upon other income and revenues of the municipality and are not included in computing the indebtedness of the municipality for the purposes of any constitutional or statutory debt limitation. If the operations should be unprofitable, the property-owner will have no greater burden than anyone else. If the operations should be profitable, the profits go into the General Fund of the City of Houma and, presumably, will aid all the citizens in providing police protection, fire protection, and other city services.

There is a wide difference of opinion between the plaintiffs and the defendants as to whether the effect of Houma's ownership of utilities will be an increase or decrease in light and gas bills. But certainly everyone in Houma who flicks on an electric light or whose wife turns on the gas in the kitchen has a genuine interest in the question—whether he is a landlord or tenant. The tenant should be able to protect that interest by a declaration in the form of a vote—if the proposition is put to his landlord. In one way or another, the tenant pays the bill.

There may have been a time when ownership of property as a voter's qualification could have been defended as part of the American system of checks and balances. The vote of the property-owners could be looked to as a restraint on governmental operations financed by taxes. The framers of the United States Constitution did not adopt this limitation on federal sufferage, but a number of the states did limit the vote to freeholders. Now, however, we are living in an age when there are utility taxes, sales taxes, cigarette taxes, gasoline taxes, income taxes, and a host of taxes, notions of which never crossed the minds of the Founding Fathers. It is a mistake therefore to put all property taxpayers in a class with veto power over governmental revenue bond issues, as if other classes of citizens pay no taxes to their city or state and have no legitimate interest in governmental operations.

The defendant's argument that property owners have a special interest is enough in itself to destroy the rationality of the classification in a revenue bond election. In such an election, the vote is limited to persons whose property taxes will, by statute, not be increased if the revenues fall short of expectations. If the General Fund of the City should suffer, the greater share of the burden will fall on the excluded class of non-property owners, that is, sixty per cent of the resident voters. In final analysis, the requirement of property ownership invites the property owners, forty per cent of the voters, to vote themselves lower ad valorem rates or the continuance of existing rates while shifting the greater burden of carrying the City's General Fund to the other sixty per cent of the resident voters.

I would hold that the distinction between property owners and non-property owners in an election to vote on the issuance of municipal revenue bonds is so arbitrary as to deny equal protection of the laws to the excluded non-

property owning residents of Houma. Accordingly, I would grant the injunction and the requested declaratory judgment. Such a holding need not affect adversely bonds now outstanding. To protect the vested interests of cities and bondholders in bonds already issued, I would apply the decision—as I see it—prospectively only.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 705

JOSEPH Q. CIPRIANO,

Appellant,

versus

CITY OF HOUMA, G. LESLIE BROUSSARD, Mayor, CHRISTIAN L. OLIVIER, CHARLES DAVIDSON, PETER BOURGEOIS, JR., SAMUEL LUSCO and WILBERT P. BONVILLAIN,

Appellees.

On Appeal from the United States District Court for the Eastern District of Louisiana.

MOTION TO AFFIRM

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 705

JOSEPH Q. CIPRIANO,

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versus

CITY OF HOUMA, G. LESLIE BROUSSARD, Mayor, CHRISTIAN L. OLIVIER, CHARLES DAVIDSON, PETER BOURGEOIS, JR., SAMUEL LUSCO and WILBERT P. BONVILLAIN,

Appellees.

On Appeal from the United States District Court for the Eastern District of Louisiana.

MOTION TO AFFIRM

Appellees, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, move that the final judgment and decree of the District Court be affirmed on the ground that the questions presented are so unsubstantial as not to warrant further argument.

STATEMENT

This is a direct appeal from the final judgment

and decree entered on July 25, 1968, by a district court of three judges specially constituted pursuant to 28 U.S.C. Sections 2281 and 2284, dismissing appellant's complaint which sought an injunction to prevent the City of Houma from issuing utility revenue bonds approved by a vote of the property taxpayers at a special election and which further sought a judgment declaring that the provisions of Louisiana law under which the election was held violated the federal constitution.

Appellant brought this action in the United States District Court for the Eastern District of Louisiana and the District Court dismissed the complaint on the ground that appellant was not denied equal protection of the laws in violation of the Fourteenth Amendment of the Constitution of the United States.

ARGUMENT

QUESTIONS PRESENTED ARE NOT SO SUBSTANTIAL AS TO REQUIRE PLENARY CONSIDERATION BY THIS COURT

Not only has appellant failed to cite laws of other states similar to the provisions of the Louisiana Constitution and statutes pursuant to which the City of Houma is authorized to issue utilities revenue bonds, appellant has failed to indicate to this Court that there exists in other jurisdictions of these United States statutes or laws of such number or significance as to cause a substantial interest in the issue now before this Court. We submit that the provisions of the Louisiana Constitution and statutes are not identical to the laws of other states, or a substantial number thereof, because of the complete control and discretion

vested in the governing authority (the elected officials) to initiate and ultimately authorize the issuance of such bonds, the necessity of obtaining of approval from a state board (Louisiana State Bond and Tax Board), and the submission of the proposition to issue such bonds to the property taxpayer voters for approval. The submission of the proposition to the electorate is only one of several of the conditions pursuant to which these bonds may be issued. Furthermore, even if all of such approvals are obtained, such bonds cannot be issued and sold without the elected officials of the political subdivision actually authorizing the ultimate issuance and sale thereof by separate and affirmative official action.

Appellant's argument that all citizens of the City have a vested interest since the funds derived from the operation of the utilities system inure to the benefit of the general fund is misleading. Initially, bonds must be sold to construct and/or improve the utilities system and the revenues derived from the operation of said system must be first dedicated to the cost of operating said system, the payment of principal and interest on bonds, the establishment of reserves therefor, and the establishment of funds for contingencies and for the normal expansion and growth requirements of the system. All of these dedicated purposes have a prior claim to the revenues derived from the operation of the utilities system and not until full satisfaction thereof can funds be transferred to other governmental functions of the City. But above all, appellant fails to give recognition to the fact that the rate and charges which must be paid by the citizens of the City are fixed solely in the discretion of the elected

officials of the City. Whether the citizen be a property owner or not, if he is a registered voter he has the right to elect the public officials who fix the utility charges for the operation of the utilities system and who have full discretion and control over the issuance and sale of revenue bonds. The voter's representative therefore initiates and finally approves the issuance of the bonds, and fixes the rates and charges to service such debt; the voter cannot be expected to vote twice on such an administrative function.

There is a vast distinction to be made in a case such as this, involving, as it does, a local administrative election, and the exercise of the voting franchise for the selection of legislative officers responsible, in the final analysis, of the course of government. The present statutory election is merely a restriction imposed by the Louisiana Legislature as a matter of public policy; there is no inherent federal or state constitutional requirement that any election be held. Under the circumstances, if property owners in the instance before this Court have a special interest in the subject matter to which the statute is directed, considered in light of the kind and purpose of the election required by the statute to be held, such special interest constitutes a rational basis for classification. There is no "invidious" discrimination here, absent which the statute must be held constitutional. This is a local administrative election, the essence of which is to perform an advisory function dealing not with the legislative or governmental character of the political subdivision, but with the purely private and business, or proprietary, functions of the political subdivision.

The undertaking of the ownership of a public utility, even though the bonds issued for the acquisition of the facility are payable only from revenues, commits the public corporation to the management and operation of the public enterprise, and a quasi-corporate function. We submit that property owners whose property and property values will be affected by the efficiency and adequacy of the utility serving their property do have an additional and special pecuniary interest in this decision. While it is true that all users of the system pay for the service, the initial decision to publicly own and operate the utility, or to improve if after acquisition, are matters of special and peculiar interest to the property owners, (whether as occupants, landlords or owners of unimproved property) because the value and even the basic security of their investment in the property are at stake, dependent as they are on proper, reasonable, and well managed utility service. The non-property owner shares none of this particular concern nor bears any of this particular risk, and if the wrong decision is made or services poor, his control, like that of the property owner, is through the ballot box at the election for municipal officials.

Although personal property, as well as real property is taxed in Louisiana and in the City of Houma, assessment and enforcement procedures are such that few people who do not own real property are called upon to pay a tax on whatever personal property they own. We note, by the way, that appellant does not allege that he owns no taxable property, only that he owns no real property and does not pay ad valorem taxes on any such property.

The relief which appellant is asking this court to grant is inappropriate to the right contended for. Appellant is not seeking a declaration of his right to vote at some specific election in the future, but to enjoin the issuance of bonds voted at an election in which he did not even attempt to participate.

THE DECISION OF THE DISTRICT COURT IS CORRECT

The decision of the lower court is clearly correct. In considering whether a classification rests on a real difference, the lower court correctly took into account the nature and the relative importance of the subject with respect to which equality is asserted. In interpreting *Harper v. Virginia State Board of Elections*, 383 U.S. 663, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966), the case relied upon by appellant as controlling in this instance, the lower court correctly set forth the holding in said case that the Equal Protection Clause of the Fourteenth Amendment prevents a state from exacting a poll tax as a condition to the right to vote in state elections. The *Harper* case only prevents states from fixing voter qualifications which invidiously discriminate. It does not declare that the Fourteenth Amendment abrogates the power of the states to classify voters. Appellant, as all other registered taxpayers of the City of Houma, have full sufferage in the election of the municipal governing body as well as the election of the Louisiana Legislature. The approval or dissent of registered property owners at an election called by a municipal governing body to issue utilities revenue bonds is not an election for general government purposes but only concerns itself with a step in the process of the administrative functions of the mu-

nicipality. This type of distinction is considered important in determining what is required to afford equal protection to voters.

HARPER V. VIRGINIA STATE BOARD OF ELECTIONS IS NOT CONTROLLING IN THIS INSTANCE

In addition to the many reasons cited by the majority opinion of the District Court, we submit that the *Harper* case is not controlling in this instance. In the *Harper* case this Court was concerned solely with those requirements for voting which relate to "one's ability to participate intelligently in the electoral process" and in reaching its decision, the Court cited as authority and relied on *Lassiter v. North Hampton County Board of Election*, 360 U.S. 45, 79 S.Ct. 985, 3 L.Ed. 2d 1072; *Carrington v. Rash*, 380 U.S. 89, 85 S.Ct. 775, 13 L.Ed. 2d 675; *Louisiana v. United States*, 380 U.S. 145, 85 S.Ct. 817; and *Reynolds v. Sims*, 377 U.S. 533, 84 S.Ct. 1362 (1964). The *Lassiter* case involved literacy tests for voters, the *Carrington* case involved the voting rights of members of the armed forces, the *Louisiana* case invalidated the "grandfather clause" requirement for voters and the *Reynolds* case involved legislative reapportionment. In all of these cases there was involved the election of officials as distinguished from elections concerning bond issues and other administrative matters. In the *Harper* case, this Court further concluded that a State violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee the electoral standard. However, there appears to be a distinct voting requirement rationale which focuses on the "interests" of the voter rather than upon his

competence or affluence. Residence requirements are one example of the application of that rationale, and taxpayer requirements are another. That "affluence" is not a constitutionally unpermissible principle of classification is evidenced by several currently accepted concepts such as that of a taxpayers' suit. Equal protection does not require identity of treatment. It only requires that classification rest on real and not feigned differences, that the distinction have some relevance to the purpose for which the classification is made, and that the different treatments be not so disparate, relative to the difference in classification, as to be wholly arbitrary. *Walters v. City of St. Louis,* 347 U.S. 231, 237, 74 S.Ct. 505, 98 L.Ed. 660 (1954).

Appellees are aware that only recently did this Court note probable jurisdiction in the case of *Kramer v. Union Free School District No. 15,* 282 F. Supp. 70 (Docket No. 258, jurisdiction noted October 14, 1968). However, the *Kramer* case like the *Harper* case involves voter classification in the elction of public officials, not a local administrative election, and even if this Court reverses the decision of the lower court, the *Kramer* decision should be distinguished from the instant case.

REAL ISSUE IS PUBLIC POWER VS. PRIVATE POWER

The record reveals that the plaintiff in this case is an employee of the Louisiana Power & Light Company, a privately owned public utility which furnishes electric power to a substantial number of residents of the State of Louisiana. Although appellant characterizes this litigation as being founded upon the issues of constitutional reapportionment and civil rights in

broadening the franchise and striking down allegedly antiquated concepts of property ownership as a qualification for voting, this litigation is basically an economic contest between "public power" and "private power", where a municipal owned utility seeking to expand its services is being bitterly opposed by a local private power company. Plaintiff's concern in his testimony was that the City was to acquire the facility in his geographical area of the City where the Louisiana Power & Light Company is presently furnishing electric power. That a municipally owned utility has the right to expropriate electric generating and servicing facilities within its geographical limits is well established.[1] In fact, the City of Houma has recently instituted an expropriation proceeding against the Louisiana Power & Light Company and said Company has likewise filed a similar proceeding against the City of Houma with respect to the facilities owned by the City outside of its geographical territory.[2] We submit that the civil rights argument advanced by appellant is solely a device employed on behalf of his employer to prevent condemnation or other municipal acquisition of its facilities or service area (or merely

[1] *City of Thibodaux v. Louisiana Power & Light Company,* 126 So. 2d 24 (La. App. 1-1961), cert. den. In the course of that litigation, LP&L removed the state court proceedings to federal court, the doctrine of abstention threw the case back to state court, and then finally allowed the case to come on for a hearing on the merits, from which appeals again were taken. *City of Thibodaux v. Louisiana Power & Light Company,* 153 F.Supp. 515 (ED La. - 1957), reversed on other grounds, 255 F 2d 744, reversed, 360 US 25. See also: 225 F.Supp. 657 (ED La. - 1963), affirmed in part, reversed in part, 373 F.2d 870 (CA 5-1967), cert. denied, 389 US 975.

[2] *City of Houma v. Louisiana Power & Light Company,* No. 29,960 of the docket of the 17th Judicial District Court for the Parish of Terrebonne, State of Louisiana; *Louisiana Power & Light Company v. City of Houma,* No. 30,014 of the docket of the 17th Judicial District Court for the Parish of Terrebonne, State of Louisiana.

to bargain for a higher purchase price). The upheaval of long established judicial precedents restricting bond elections to property taxpayers, where a real interest is vested in such taxpayers, in reliance upon which many millions of dollars of securities have been issued in good faith and presently remain outstanding, would suggest that this case does not present a bona fide case or controversy in which it would be either prudent, necessary or appropriate for this Court to go out of its way to overturn such a weight of precedence and to precipitate uncertainly as to vast amounts of outstanding governmental securities which might provoke a nuclear chain reaction of endless litigation to resolve the consequences of the Court being led down a path by a litigious private utility concerned solely with its own economic betterment and with obstructing the right of a municipality to provide a low cost utility service for the general welfare of the citizenry.

CONCLUSION

We respectfully submit, therefore, that the appellant presents no substantive questions for the decision of this Court, and that the judgment and decree of the District Court should be affirmed.

Respectfully submitted,

.....

E. E. HUPPENBAUER, JR.
707 National Bank of Commerce Building
New Orleans, Louisiana 70112
Counsel for Appellees.

November 27, 1968

CERTIFICATE

I hereby certify that a copy of the foregoing motion to affirm has been served upon opposing counsel of record and all other counsel of record in the District Court by depositing a copy thereof in the United States Mail, postage pre-paid, addressed to their addresses of record.

New Orleans, Louisiana, November 27, 1968

.....

E. E. HUPPENBAUER, JR.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 705

JOSEPH Q. CIPRIANO,

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CITY OF HOUMA, G. LESLIE BROUSSARD, Mayor, CHRISTIAN L. OLIVIER, CHARLES DAVIDSON, PETER BOURGEOIS, JR., SAMUEL LUSCO and WILBERT P. BONVILLAIN,

Appellees.

On Appeal from the United States District Court for the Eastern District of Louisiana.

BRIEF OPPOSING MOTION TO AFFIRM.

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IN THE

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OCTOBER TERM, 1968

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Appellant,

versus

CITY OF HOUMA, G. LESLIE BROUSSARD, Mayor, CHRISTIAN L. OLIVIER, CHARLES DAVIDSON, PETER BOURGEOIS, JR., SAMUEL LUSCO and WILBERT P. BONVILLAIN,

Appellees.

On Appeal from the United States District Court for the Eastern District of Louisiana.

BRIEF OPPOSING MOTION TO AFFIRM.

May It Please the Court:

I.

THE QUESTIONS ARE SUBSTANTIAL

The Appellees in their motion to affirm seem to argue that the questions presented are not substantial because the constitutional and statutory provisions of Louisiana are not identical to those of a substantial number of states. We submit that it is totally immaterial whether the Constitution and statutes of Louisiana be identical to even one other State in order for the questions presented to be of the gravest concern and of material significance. The

questions involve the requirement of property ownership and the payment of taxes as a condition of voting in a **non-tax election.** Indeed, in *Harper v. Virginia State Board of Elections*, 383 U.S. 663, 86 S. Ct. 1079 (1966), this Court noted that only a "hand full of states" conditioned the franchise upon the payment of a poll tax (Footnote 4).

Appellees further argue that appellant's showing, that the funds derived from the utility system ultimately go into and benefit the General Fund, is misleading. We do not consider anyone so naive as to be uninformed of the fact that any revenue bonds sold on the basis of dedicated utility revenue must be first repaid before placing the remainder of the revenue in the General Fund of the issuing authority. At Page 8, Paragraph 3 of appellant's Jurisdictional Statement the statutory mandate that repayment be made from utility revenue is clearly set forth. We submit that no statement made or argument set forth by appellant was misleading.

Appellees further claim that since elected City Officials vote ultimately on the issuance of bonds and since all voters elect the said City Officials, then non-property-owners should not be allowed to vote in revenue bond elections because they would in effect be voting twice; once for the election of officials and once in the revenue bond election. If this be so, does not the property owner vote twice? Obviously, the issue is not how many times anyone votes, but whether the franchise, in any and all elections, be extended equally to all who have an equal interest, an equal capability and an equal right. See *Pierce v. Village of Ossining*, 68 Civ. 4150, U. S. District Court, Southern District of New York (Appendix A), and dissenting opinions in *Kramer v. Union Free School District No. 15*, 282 F. Supp. 70 (Docket No. 258, Jurisdiction Noted, October

14, 1968) and in *Cipriano v. City of Houma*, 286 F. Supp. 828 (E.D. La. 1968).

II.

AN ATTEMPT BY APPELLANT TO VOTE WOULD HAVE BEEN FUTILE.

Appellees seek to give this Court the impression that appellant had no interest in this election. At Page 117 of the Transcript of Proceedings, appellant testified that he did not own any property within the limits of the City of Houma, he further testified that he did not attempt to vote only because the announcement and publications put forth by the City indicated that only property owners could vote. See Exhibit P-1 through P-8. To have presented himself at the polls would have been a futile gesture. The law does not require such gestures as a pre-condition to redress of grievances. LRS 33:4251-4262; LRS 39:501-518.

III.

HARPER v. VIRGINIA STATE BOARD OF ELECTIONS IS NOT LIMITED IN APPLICATION TO ELECTIONS OF PUBLIC OFFICIALS.

Appellees argue that the *Harper* case should be distinguished on the grounds that it involves ". . . the election of public officials, not a local administrative election, . . .". To acknowledge such a distinction would, in effect, allow a poll tax in elections other than those involving public officials. We could not construe this to have been the Court's intention. The reasoning and rationale of the *Harper* case is that payment of a tax has no relationship to intelligent voting. The identical principal or rationale is equally applicable in the case at issue.

Since appellees make special note that the subject suit

involves a local administrative election as distinguished from an election of public officials, the case of *Pierce v. The Village of Ossining*, 68 Civ. 4150, United States District Court, Southern District of New York, November 1, 1968, is particularly noteworthy. A copy of the complete decision is annexed hereto, as Appendix A. In the *Pierce* case, a three-Judge Federal Court convened under 28 U.S.C. Section 2281 declared unconstitutional a New York statute and a portion of the Village charter on the grounds that they required property ownership as a condition of voting in a local election which was **administrative in nature** and **did not involve the election of officials.** The Court, citing *Harper v. Virginia State Board of Elections, supra,* as controlling, went on to state that since the change sought in the election affected all who live in the Village, to deny the franchise to those who do not own real property was an invidious discrimination. Likewise in the instant case, the utility system and the general revenues are owned by all of the citizens of the City of Houma and anything affecting those revenues affects all of the citizens. To deny all of the citizens the right to vote is therefore arbitrary and an invidious discrimination.

IV.

APPELLEES ARGUMENT GOES BEYOND THE RECORD IN THIS CASE

Other arguments made by appellees in that portion of appellees' motion entitled "REAL ISSUE IS PUBLIC POWER VS. PRIVATE POWER" are clearly outside of the record of this case. The introduction of these extraneous issues is evidently calculated to divert this Court's attention from the true issue of an unconstitutional limitation on the right to vote. We make no further comment on these arguments.

CONCLUSION

We submit that the arguments set forth in appellees' Motion to affirm are without merit and that the motion should be dismissed.

Respectfully submitted,

KENNETH WATKINS,
415 Goode Street,
Houma, Louisiana,
Counsel for Appellant.

CERTIFICATE

I hereby certify that a copy of the foregoing Brief opposing motion to affirm has been served on opposing counsel of record and all other counsel of record by depositing such in the United States Mail, postage pre-paid, addressed to their addresses of record.

Houma, Louisiana, December ....., 1968.

.....

KENNETH WATKINS

APPENDIX "A"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Three-judge Court
68 Civ. 4150

CATHERINE PIERCE, et al.,
Plaintiffs,

—and—

GERARD T. BUTLER, RICHARD B. SMITH, ALFRED WEISS and ROBERT FLOOD,
Intervening Plaintiffs,

—against—

THE VILLAGE OF OSSINING, et al.,
Defendants.

Before FEINBERG, Circuit Judge, McGOHEY and WYATT, District Judges.

THE LEGAL AID SOCIETY OF WESTCHESTER COUNTY,
White Plains, New York
Attorney for Plaintiffs,

BERNARD CLYNE, ESQ.
NORMAN LICHTENSTEIN, ESQ.
BEATRICE ROTHMAN
ANTONE G. SINGSEN III, ESQ.
Of Counsel

ANDREW J. FIORE, ESQ., Corporation Counsel,
Pleasantville, N. Y.
Attorney for the Village of Ossining

LOUIS J. LEFKOWITZ, ESQ., Attorney General of the State of New York,

Attorney for Intervenor-Defendant State of New York

JOEL LEWITTES, ESQ.
Assistant Attorney General
Of Counsel

PAUL, WEISS, GOLDBERG, RIFKIND, WHARTON & GARRISON,
New York, New York
Attorneys for Intervening Plaintiffs and Ossining Chamber of Commerce, *Amicus Curiae*

MARTIN LONDON, ESQ.
Of Counsel

PER CURIAM:

This is an application by seven plaintiffs for injunctive and other relief against enforcement of a state statute, section 4-402(b) of the Village Law of New York. The court sits as a statutory three-judge district court under 28 U.S.C. §§ 2281 and 2284. For reasons given below, we grant the preliminary injunctive relief sought.

The three original plaintiffs, Catherine Pierce, George Sarah Taylor and William Taylor, and the four intervening plaintiffs, Gerard T. Butler, Richard B. Smith, Alfred Weiss and Robert Flood, are adult residents of the Village of Ossining in Westchester County in the Southern District of New York. They are all duly registered voters in the State of New York eligible to vote in the general election to be held on November 5, 1968. Defendants are the Village of Ossining of the State of New York, the Board of Trustees of the Village, John G. Donzella, the Mayor of the Village, and William H. Brown, Jr., Timothy L. Cronin, Jr., John A. Leslie and Herman J. Lips, trustees of the Village. Intervening defendant is the State of New York.

The Ossining Chamber of Commerce has filed an amicus brief in support of plaintiffs.

According to the papers before us, including stipulations of fact, and the record of the hearing held on October 31, the following are the pertinent facts: A number of residents of Ossining presented to the Board of Trustees of the Village a petition asking that a proposition be submitted to the voters of the Village; the proposition was for a change in village government from a mayoral system to a village manager system; on August 20, 1968, the Village trustees voted to submit the proposition to the voters at the annual Village election, to be held this year on the date of the general election, i.e., on November 5, 1968; and the trustees of the Village will apply to the Village election the provisions of section 4-402(b) of the Village Law of New York that to be able to vote on the proposition a person must "be an owner of property in the village assessed upon the last preceding assessment-roll thereof." Three of the plaintiffs have been residents of the Village of Ossining for over forty-five years, and at least one of the remaining plaintiffs has been a resident of the Village for five years. However, none of the plaintiffs own property assessed on the last village assessment roll although some of them do own cooperative apartments in the Village.

Plaintiffs claim that section 4-402(b) of the Village Law is unconstitutional, depriving them of the equal protection of the laws (fourteenth amendment) because it denies plaintiffs the right to vote by a classification—property ownership—which is arbitrary and has no reasonable relation to proper qualifications for voting. The complaint seeks a preliminary injunction against enforcing section 4-402(b) in the Village election to be held on November 5, 1968; a permanent injunction against any enforcement at

any time of section 4-402(b); and a declaratory judgment that section 4-402(b) is unconstitutional.

It is noteworthy that the chief arguments presented on behalf of defendants go not to the constitutionality of section 4-402(b) but to various considerations which might lead a court to withhold equitable relief. This reluctance to defend section 4-402(b) on its merits is understandable. The Attorney General of the State of New York is reported to have recommended legislation which would repeal such legislation as section 4-402(b); at least in part the recommendation was because of the doubtful constitutionality of property ownership qualifications for voting or holding office. New York Law Journal, Jan. 19, 1968, page 1. Moreover, we think it is clear that under such decisions as Harper v. Virginia Board of Elections, 383 U.S. 663 (1966), Carrington v. Rash, 380 U.S. 89 (1965), and Landes v. Town of North Hempstead, 20 N.Y. 2d 417, 284 N.Y. S. 2d 441 (1967), section 4-402(b) denies to plaintiffs the equal protection of the laws. The proposition on which plaintiffs have been excluded from voting would work a fundamental change in the village government where they live. Whether that change should be made affects all who live in the Village so that denying the franchise to those who do not own real property is an invidious discrimination.

The effect of that discrimination on this case is startling. The Village of Ossining has approximately 22,300 residents; of these, some 9,840 are registered to vote in the coming election. A substantial part of these voters, however, live in apartment buildings and thus do not meet the requirement of section 4-402(b) that their names appear on the assessment rolls. In one election district, district 22, which contains ten per cent of the electorate, apparently very few, if any, of the voters would be qualified

to vote on the proposition. And in the Village as a whole, there are only apparently 4,500 registered voters whose names also appear on the property assessment rolls. Thus, the effect of section 4-402(b) would be to disqualify approximately 55 per cent of all the voters of the Village.

In opposition to the application, it is urged that plaintiffs may have relief in the courts of New York. This is indeed true and we feel that such applications as this should be made to a forum which has shown itself sensitive to the constitutional rights asserted here. E.g., Landes v. Town of Hempstead, supra. We regret, of course, the necessity of holding a state statute unconstitutional. However, as we construe the applicable decisions, the proper course for us is to rule on the issues before us on the merits, rather than to refer plaintiffs to the state courts. E.g., Zwicker v. Koota, 389 U.S. 241 (1967); Holmes v. New York City Housing Authority, 398 F. 2d 262 (2d Cir. 1968).

It is also urged that only a local law, not a state statute, is involved and that a three-judge court should not deal with "local ordinances or resolutions." Moody v. Flowers, 387 U.S. 97, 101 (1967). The argument is based on the fact that the petition which initiated the proposition to be voted on in the Village election was submitted and accepted under section 23 of the Charter of the Village of Ossining. However, the property qualification for voting on that proposition is not found in the Village Charter but in section 4-402(b) of the Village Law, a state statute which "applies generally" to all village elections upon propositions. Sailors v. Board of Educ., 387 U.S. 105, 107 (1967).

At the hearing before this court, plaintiffs made clear that the primary relief they sought was enjoining the

operation of section 4-402(b) rather than halting the election. For the reasons stated above, we conclude that plaintiffs are entitled to such an injunction. Because of the imminence of the election, the court explored with the parties in open court the question whether it was feasible and advisable to hold the election in such a way that it would not be necessary to have another election regardless of the outcome of the decision of this court or of a reviewing court. Thus, the possibility was explored of using different color paper ballots to facilitate separation of ballots between those who appear on the assessment rolls and those who do not. However, the attorney for the local officials of Ossining maintained that consideration of expense and manpower would make it impracticable to do so. We have concluded that it is not our province to decide that issue. We enjoin the operation of section 4-402(b) so that all who wish to vote on the proposition in the presently scheduled election may do so. We leave it to defendants to decide whether to provide for separation of ballots in an appropriate way or to seek whatever other relief they may wish. We do no more than enjoin the operation of an unconstitutional statute in the Village election.

The above incorporates findings of fact and conclusions of law. The application for a preliminary injunction is granted.

So ordered.

/s/ WILFRED FEINBERG
U. S. C. J.

/s/ JOHN F. X. McGOHEY
U. S. D. J.

/s/ INZER B. WYATT
U. S. D. J.

Dated: New York, N. Y.
November 1, 1968

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 705

JOSEPH Q. CIPRIANO,

Appellant,

versus

CITY OF HOUMA, G. LESLIE BROUSSARD, Mayor, CHRISTIAN L. OLIVIER, CHARLES DAVIDSON, PETER BOURGEOIS, JR., SAMUEL LUSCO and WILBERT P. BONVILLAIN,

Appellees.

On Appeal from the United States District Court for the Eastern District of Louisiana

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BRIEF FOR THE APPELLANT

May It Please the Court:

The appellant, pursuant to United States Supreme Court Rules 40 and 41, files his brief on the merits together with a Single Appendix prescribed by Rule 36.

OPINIONS BELOW

The District Court delivered a written opinion and dissenting opinion on July 15, 1968, and entered Judgment on July 23, 1968. The judgment and opinions are reported in 286 F. Supp. 823 (1968). Copies of the opinions and judgment are attached to the jurisdictional statement, as Appendices B and C.

JURISDICTION

The appeal herein is from a final decree made and entered by the United States District Court for the Eastern District of Louisiana specially constituted under 28 U. S. Code, Sections 2281 and 2284, upon the plaintiff's application for a temporary and permanent injunction to restrain the enforcement, administering, execution of, or the giving effect to provisions of the Constitution and statutes of the State of Louisiana which require the ownership of property and the payment of taxes thereon as a qualification or a condition precedent to voting in elections in Louisiana as repugnant to the due process and equal protection clauses of the Fourteenth Amendment of the Constitution of the United States.

The application of plaintiff further sought a Judgment declaring the aforementioned provisions of the Constitution and statutes of the State of Louisiana to be void and repugnant to the same clauses of the Fourteenth Amendment of the Constitution of the United States and particularly declaring void an election held by the City of Houma, Louisiana, on October 24, 1967, pursuant to the aforementioned constitutional and statutory provisions of the State of Louisiana.

The final decree appealed from was made on July 23, 1968 and entered on July 25, 1968. Notice of appeal was

filed in the United States District Court for the Eastern District of Louisiana on September 6, 1968.

The Supreme Court of the United States has jurisdiction to review by direct appeal the Judgment complained of by the provisions of 28 U. S. Code, Sections 1253 and 2101(b).

Probable jurisdiction was noted in this case on January 27, 1969.

STATUTES, RULES AND REGULATIONS INVOLVED

Statutes and constitutional provisions involved are Louisiana Constitution, Article 14, Section 14 (m) (West La. Const. Vol. 3, Page 42); Sub-Part C-Part I, Chapter 10, Title 33 of the Louisiana Revised Statutes (West LSA-R.S. 33:4251-4262, Vol. 20A, Pages 178-186), and Part II, Chapter 4, Subtitle II, Title 39 of the Louisiana Revised Statutes (West LSA-R.S. 39:501-518, Vol. 22, Pages 685-730), all of the above cited being annexed hereto, as Appendix A.

The three-judge District Court held the above statutes to be constitutional, with a dissent to said decision rendered by the panel Judge from the Fifth Circuit Court of Appeals.

QUESTIONS PRESENTED

Article 14, Section 14(m) of the Louisiana Constitution of 1921 provides that " . . . The Legislature may, in its discretion, require an election by the tax-paying voters of the subdivision or district as a condition precedent to the issuance of such bonds, in which case the voters' qualifications shall be governed by the provisions of this Section XIV pertaining to other bond elections . . . "

Pursuant to the above constitutional provisions, La. R.S. 33:4251-4262 were enacted and which, by reference, incorporated La. R.S. 39:501-518.

The above cited constitutional and statutory provisions set forth the procedure for revenue bond elections in corporate municipalities in the State of Louisiana, which provisions require that the voters be property-owning taxpayers. The applicable statutes provide that any bonds issued thereunder shall be repaid solely and exclusively from the income and revenues of the utility acquired, constructed, or improved with the monies derived from the sale of such bonds. The principal question presented is:

> Whether the above cited constitutional and statutory provisions of the State of Louisiana are unconstitutional and in violation of the due process and equal protection requirements of the Fourteenth Amendment of the Constitution of the United States insofar as they require the ownership of property and the payment of taxes thereon as a qualification to vote in a revenue bond election, which election cannot, either directly or indirectly, impose any tax or other burden on property-owning taxpayers.

STATEMENT

Joseph Q. Cipriano, appellant herein, is a duly registered and qualified voter in the City of Houma, Parish of Terrebonne, State of Louisiana but does not own any real property nor does he pay any municipal ad valorem taxes on any such property. On September 12, 1967 the defendants, the Mayor and Board of Aldermen of the City of Houma, Louisiana, adopted the resolution ordering and calling a special election to be held in the City of Houma, State of Louisiana pursuant to Part II, Chapter 4, Title 39, Section 508 (La. R.S. 39:508), and Sub-Part C, Part I, Chapter 10, Title 33, Section 4258 (La. R.S. 33:4258) of the Lou-

isiana Revised Statutes of 1950, and Article 14, Section 14(m) of the Louisiana Constitution of 1921 to authorize the issuance of utility revenue bonds by said city in the amount of $10,000,000.00. Under the terms of the above resolution the election was specifically limited to resident property taxpayers of the City of Houma.

The election was held on October 24, 1967, pursuant to the resolution adopted on September 12, 1967 and further pursuant to the authorities hereinabove stated. The Mayor and Board of Aldermen met on October 25, 1967 and canvassed the returns of the election and declared the results thereof. In said election, 1,828 voters representing $2,736,258.00 in assessed valuation voted in favor of the proposition and 896 voters representing $1,108,268.00 in assessed valuation voted against the proposition.

Appellant is a member of a class of 6,926 duly qualified and registered non-property-taxpaying voters in the City of Houma, all of whom are similarly situated and entitled to bring a class action under Rule 23 of the Federal Rules of Civil Procedure. Appellant and all members of this class were prohibited from voting in the election held in the City of Houma on October 24, 1967 because of the statutory provisions of Louisiana law requiring that a voter be a qualified resident property taxpayer of the City of Houma.

During the year 1967 the total number of residents of the City of Houma was approximately 35,000. The total number of registered voters in the City of Houma on October 24, 1967 was 11,606. The total number of property taxpaying voters on October 24, 1967 in the City of Houma was 4,680. The total number of non-property-taxpaying

registered voters on October 24, 1967 in the City of Houma was 6,926.

Plaintiff, appellant herein, brought this action in the United States District Court of the Eastern District of Louisiana, New Orleans Division, as a class action under Rule 23 of the Federal Rules of Civil Procedure.

Appellant sought a Declaratory Judgment under Title 28, Section 2101 and 2102 to have declared void and unconstitutional and in conflict with the equal protection and due process clause of the Fourteenth Amendment of the Constitution of the United States, the provisions of the statutes and Constitution of Louisiana which have the effect of requiring ownership of property and the payment of taxes thereon as a condition of voting in revenue bond elections wherein there are no tax involvements.

Appellant further sought an injunction under the provisions of Title 28 of the United States Code, Section 1343 (3), (4), Title 42, United States Code, Sections 1981 through 1985 and under the provisions of Rule 65 of the Federal Rules of Civil Procedure to enjoin the defendants from issuing bonds pursuant to said election of October 24, 1967, and further enjoining the defendants from enforcing, administering or giving any effect to the cited provisions of the Constitution and statutes of Louisiana.

The Trial Court, in a divided opinion, found for the defendants, holding that the cited constitutional and statutory provisions of Louisiana were not so arbitrary or irrational as to be in violation of the Fourteenth Amendment of the United States Constitution. From that Trial Court decision this appeal is made.

ARGUMENT

I.

EFFECT OF METHOD OF RETIREMENT OF BONDS

We make special note of the fact that this is a utility **revenue** bond election called and held under the provisions of Sub-Part C - Part I, Chapter 10, Title 33 of the Louisiana Revised Statutes (La. R.S. 33:4251-4262). The cited statutes provide that the bonds authorized by this election to be issued may be repaid only or exclusively from the income and revenues derived from the operation of the utility, and therefore, **by said limitation, effectively prohibit the imposition of any taxes, ad valorem or otherwise,** which may be used, in whole or in part, to retire any portion of the bonds. Because of this, a property owner should have no greater stake or interest in this election than a non-property owner as neither his property nor his property rights can in any way be adversely affected by the outcome of this election.

The full faith and credit of the issuing authority cannot be affected by a default in the payment of the bonds. La. R.S. 33:4252 provides that the bonds do not constitute an indebtedness or pledge of the general credit of the issuing authority. La. R.S. 33:4253 provides that the **only** security for these bonds is a pledge of the revenues of the utility and does not provide for the mortgaging of any physical assets of the utility or the issuing authority. In the event of default the only recourse provided is receivership of the utility and payment of the bonds from the revenues derived from the operation of said utility.

2.

DISCRIMINATION

It is plaintiff's position that the provisions of the Con-

stitution and statutes of the State of Louisiana requiring the ownership of property and the payment of taxes thereon as a condition of voting in a revenue bond election invidiously discriminate against plaintiff and the members of his class who together represent more than 59% of the registered voters of the City of Houma. (See Stipulation of Facts, paragraph 8. R. p. 36, App. p. 20.)

The case relied upon by plaintiff as controlling this instance is the case of *Harper v. Virginia State Board of Elections*, 383 U. S. 663, 86 S. Ct. 1079 (1966).[1] The Harper case was concerned with the requirement of the payment of a poll tax as a qualification to vote. This case is concerned with the requirement of the payment of a property tax as a qualification to vote.

In Harper this Court concluded that a state violates the equal protection clause of the Fourteenth Amendment whenever it makes the affluence of the voter or the payment of any fee an electoral standard. **"Voter qualifications have no relation to wealth nor the paying or not paying this or any other tax."**

The Court further declared that "... **we must remember that the interest of the State when it comes to voting, is limited to the power to fix qualifications. Wealth, like race, creed, or color, is not germane to one's ability to participate intelligently in the electoral process. Lines drawn on the basis of wealth or property, like those of race ..., are traditionally disfavored.**" (Underscoring ours)

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[1] See also *Pierce v. The Village of Ossining*, 68 Civ. 4150, United States District Court, Southern District of New York, November 1, 1968, wherein a three-judge Federal Court declared unconstitutional a New York statute and a portion of the Village Charter on the grounds that they required property ownership as a condition of voting in a local election which was administrative in nature.

The ruling and reasons of the Harper case are applicable here. All qualified voters must have an equal right and opportunity to vote in any election whether it be to elect a candidate, to adopt a constitutional amendment or to declare on a proposition. No state has the right to impose any qualification or standard which arbitrarily, unfairly or unreasonably discriminates. In the instant case the voter qualification imposed has no relationship to either the intelligent use of the ballot or to the protection of any legitimate interest. The requirement of property ownership and the payment of taxes thereon to vote in elections such as the subject election invidiously allows and invites the property owner to vote himself a lower ad valorem tax rate while imposing the burden of the City's operation on his fellow citizens who are generally of less affluence.

Defendants have contended that the requirement of property ownership and the payment of taxes thereon is a valid requirement because the purpose of such requirement is the valid desire to place a check upon the borrowing by governmental units similar to the check provided by debt limitation. It is obvious that even if the objective of debt limitation is desirable as a general proposition, the requirement of property ownership and tax payment thereon as a qualification to vote in a revenue bond election can in no way achieve that objective, but in fact militates against the achievement of that objective and actually induces the property owning taxpayer to vote favorably on the revenue issue, with its consequent increase in debt, because of his desire to increase the general revenues of the City from a source other than the property tax, and thereby insuring and protecting his low property tax rate at the obvious expense of the non-property owning voter. Unimpeachable and irrefutable evidence that the above-stated result obtained in

this election are the several advertisements run by the City of Houma and placed of record in these proceedings by plaintiff. These advertisements indicate the general tenor of the extensive campaign conducted by the City for the passage of this bond election. The most casual examination of the advertisements, identified as P-1 through P-8, and particularly those identified as P-1 and P-2, shows clearly that the City invited and directed the property owning taxpayer to go out and vote in favor of the issue as a means or method of protecting and/or assuring low property tax rates and clearly emphasized the fact that **no** taxes **could** be added. The foregoing clearly illustrates the invidious discrimination against the non-property owning registered voter by the imposition of property ownership and tax payment thereon as a qualification to vote. This discrimination is the more reprehensible because the average voter, who has no opportunity to study the statutes, is not aware of the fact that the burden of municipal operations is being imposed on him without his having an opportunity to speak on the question.

The record is clear, when the testimony of petitioner is recounted, that the City of Houma (or rather three of the five Councilmen of the City) has the power to tax all of the citizens by increasing utility rates. This, however, is not essential to our case. The **essential point** is that there is discrimination amongst citizens who have an equal interest in the general revenues of the City and that some citizens, without reasonable or rational basis for distinccion, are deprived of their right to vote. There is equality of interest amongst all of the citizens of the City of Houma in a revenue bond election and yet there is no equality in voting rights. The degree of this discrimination is neither minute nor irrelevant. The Court, in Harper, declared **" . . . to introduce wealth or the payment of a fee as**

a measure of voter's qualification is to introduce a capricious or irrelevant factor. The degree of the discrimination is irrelevant." (Underscoring ours)

Unless the ownership of property and the payment of taxes thereon be considered only with reference to the burden imposed by the result of the election, it should not be considered at all. Here we have already shown that there is no possible burden to the property-owning-taxpayer but only the inevitability of advantage.

Under the traditional test for applying the equal protection clause, a statutory classification scheme is considered constitutional if it is based on a real difference and if the classification is relevant to the purpose for which it is made. *Walters v. City of St. Louis*, 347 U. S. 231, 74 S. Ct. 505, 98 L. Ed. 660 (1954). The Trial Court failed to recognize or apply this test. The Trial Court did not determine the legislative purpose for the classification but simply surmised what might have been the legislative reasons for the distinction. No real effort was made to determine the purpose nor to find any relevancy between the purpose and the classification.

It is submitted that the traditional purposes for classifications such as the one at issue has been that of fiscal restraint or check upon borrowing by governmental units. We cannot reasonably conceive of any other purpose. Yet, as we have shown above, the statutory scheme is in no way conducive to the exercise of restraint, but rather induces or promotes the passage of the issue and the incurrence of greater debt.

That the instant classification is completely arbitrary is further demonstrated by the fact that all qualified electors are allowed to vote in some revenue bond elections in

Louisiana regardless of whether they own any property or pay any taxes thereon. Sub-Part B - Part I, Chapter 10, Title 33 of the Louisiana Revised Statutes (La. R.S. 33:4221-4230) allows **all resident electors** to vote in revenue bond elections where the utility property is mortgaged and the revenues are pledged to secure the bonds. Sub-Part D - Part I, Chapter 10, Title 33 of the Louisiana Revised Statutes (La. R.S. 33:4281-4290) allows **all resident electors** to vote in elections to authorize issuance of certificates of indebtedness secured by and repaid exclusively from the revenues of the utility or the franchises thereof.

There is no reason to deny the franchise to the non-property-owning taxpayers under Sub-Part C. The fact that the classification is not used under Sub-Parts B and D is evidence of the fact that it is unnecessary, unwarranted and totally arbitrary as used in Sub-Part C. Yet, in spite of the above referenced Sections, the Trial Court failed to determine the purpose of the classification challenged in the instant case and made applicable in only one of the three instances cited.

3.

PROSPECTIVE OR RETROSPECTIVE EFFECT OF DECISION

A decision by this Court declaring the unconstitutionality of the statutes and provisions of the Louisiana Constitution requiring the ownership of property and the payment of taxes thereon as a condition or qualification to vote in a revenue bond election will in no way affect the financial status of the community, the parish or the State of Louisiana. The statutes attacked herein provide for a sixty (60) day period from the promulgation of the result of any election (LSA-R.S. 33:4260) within which to contest

the election. Once this period has elapsed, no attack can be made on an election held under the provisions of said statutes. After the expiration of said sixty day period, rights may become vested with regard to issuing bonds authorized in any such election. Here, however, the result does not obtain. The sixty day period is provided for the purpose of allowing aggrieved parties time in which to contest the election. Obviously, no rights could be vested in any party until the expiration of the time allowed by the statute. Therefore, no rights have become vested with regard to the election of October 24, 1967.

In order to protect petitioner and other members of his class, it is only necessary that the Court give prospective effect to any judgment rendered herein declaring said statutes unconstitutional. The case of *Linkletter v. Walker*, 381 U. S. 618, 85 S. Ct. 1731 (1965) is ample authority for the proposition that no retrospective effect need be given in the instant case. Although Linkletter involved criminal law, the Court clearly declared that the same rules are applicable in civil litigation. The Court stated that "**. . . no distinction was drawn between civil and criminal litigation is shown by the language used not only in Schooner Peggy, supra, and Chicot County, supra, but also in such cases as State v. Jones, 44 N.M. 623, 107 P. 2d 324 (1940) and James v. United States, 366 U. S. 213, 81 S. Ct. 1052, 6 L. Ed. 2d 246 (1961) . . . .**" (Underscoring ours)

The Court clearly set forth the proposition that **there is no absolute rule of retrospective action in the area of constitutional adjudication.** The Court declared,

> ". . . we believe that the Constitution neither prohibits nor requires retrospective effect. As Justice Cardozo said, 'We think the Federal Constitution has no voice upon the subject.'

> "Once the premise is accepted that we are neither required to apply, nor prohibited from applying, a decision retrospectively, we must then weigh the merits and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation. We believe that this approach is particularly correct with reference to the Fourth Amendment's prohibitions . . ."

The Court further stated the rule clearly in the following language: " . . . Thus, the accepted rule today is that in appropriate cases the Court may in the interest of justice make the rule prospective . . ."

Therefore, this Court may declare the statutes unconstitutional and void the election of October 24, 1967, without in any way affecting any election held under those statutes where the sixty day period has previously expired without any attack having been made.

We submit that in the instant election, where every registered voter has an equal stake and interest in the revenues of the City and the utility system owned and operated by it, equal protection demands that every registered voter have an equal opportunity to vote.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Judgment of the Court below should be reversed and that the provisions of the Constitution and statutes of the State of Louisiana which require the ownership of property and the payment of taxes thereon as a condition of voting in revenue bond elections in Louisiana be declared in violation of the Constitution of the United States

and particularly the Fourteenth Amendment thereof and therefore null and void.

It is further respectfully submitted that the election held in Houma, Louisiana on October 24, 1967 be declared null and void and without effect and that an injunction issue against all named defendants, or their successors in office, enjoining the said parties from enforcing, administering or giving any effect to the cited provisions of the Constitution and statutes of Louisiana.

Respectfully submitted,

KENNETH WATKINS
415 Goode Street
Houma, Louisiana
Counsel for Appellant

CERTIFICATE

I hereby certify that a copy of the foregoing Brief for the Appellant has been served on opposing counsel of record by depositing such in the United States Mail, postage pre-paid, addressed to their addresses of record.

Houma, Louisiana, March , 1969.

KENNETH WATKINS

APPENDIX

I. LOUISIANA REVISED STATUTES OF 1950

Title 33—Municipalities and Parishes

Chapter 10—Public Utilities

Part I—Ownership, operation and financing

SUB-PART B. MORTGAGE OF PROPERTY AND PLEDGE OF REVENUES OF UTILITY

§ 4221. Bond issue

Any municipal corporation, the City of New Orleans excepted, or any district created for the purpose of supplying the public with a public utility may, for the purpose of constructing, acquiring, extending, or improving any revenue producing public utility, within or without the limits of the municipality or district, issue bonds secured exclusively, principal and interest, by mortgage on the lands, buildings, machinery, and equipment, and by pledge of the income and revenues of the public utility.

§ 4222. Resolution ordering election; notice of election

Whenever the governing authority of any municipal corporation or district desires to issue bonds to be secured as provided in R.S. 33:4221 it shall, by resolution adopted by a vote of two-thirds of its members, order an election to be held to determine whether or not it is the sense of the qualified resident electors of the municipality or district that the bonds be so issued and secured. The resolution shall set forth specifically the amount of bonds proposed to be issued, the number of years they shall run, the maximum rate of interest which they shall bear, the purpose for which they are to be issued, and a particular description of the property to be mortgaged and the income and revenues which are to be pledged for the security of the bonds, and shall designate the date of the election and the polling places. Notice of the election shall be given by publication

for thirty days in a newspaper published in the municipality or district; or if there be no newspaper published in the municipality or district, then in a newspaper published in the parish. Publication for four successive weeks shall be deemed sufficient if thirty days intervene between the first publication and the date of the election.

If there be no newspaper published in the parish, then the notice may be given by posting for thirty days prior to the election in five public places within the municipality or district. The notice shall embrace substantially all matters required to be set forth in the resolution ordering the election, and shall be signed by the chief executive officer of the municipality or of the district.

§ 4223. Election

Commissioners shall be appointed and the election shall be held and the returns thereof made to the governing authority calling the election and the results promulgated in so far as practicable, in the same manner as provided by law for elections to authorize the issue of bonds secured by special taxes.

§ 4224. Materials for election; form of ballot

The governing authority of the municipality or of the district shall furnish the commissioners of election with a list of electors qualified to vote in the municipality or district, certified by the registrar of voters of the parish, and with ballots, tally sheets, blanks for making returns, and all paraphernalia necessary for properly holding the election. Ballots shall be substantially in the following form: "Shall the governing authority of the (City, Town, Village, ... District) of ..... be authorized to issue bonds in the sum of ..... Dollars, to run for ..... years, bearing interest not exceeding ..... percentum per annum, payable annually or semi-annually, for the purpose of

..... and by pledge of the income and revenue of such property or properties?"

To vote in favor of the proposition, the voter will make a cross mark (X) in the space under the word "Yes" and to vote against it, the voter will make a cross mark (X) in the space underneath the word "No".

YES	NO

§ 4225. Issuance of bonds; execution of mortgage and pledge; remedies in case of default

When the returns of the election have been received and canvassed by the governing authority of the municipality or district, and the results promulgated, if a majority of the qualified electors of the municipality or district, who voted at the election, have voted in favor of the proposition submitted, the governing authority may issue bonds in the amount, running for the number of years, and bearing interest at a rate not exceeding that submitted, for the purpose set forth in the resolution ordering the election, and secure the same by mortgage of the property specifically described in the resolution and by pledge of the income and revenues of the property.

Thereupon the governing authority may, by resolution, empower and direct the chief executive officer of the municipality or district, and its clerk or secretary, to issue, execute, sign, seal, negotiate, and deliver the bonds and to make and execute in the name and under the seal of the municipality or district, an act of mortgage and pledge to secure the payment of the bonds in principal and interest, in accordance with the resolution ordering the election, and when the act of mortgage and pledge has been executed, the property thus mortgaged and the income and revenues

therefrom thus pledged, shall remain mortgaged and pledged for the security of the bonds, in principal and interest, until they have been fully paid and discharged; or, in the alternative, the governing authority of the municipality or district may deposit with the trustee, as provided in the act of mortgage, cash or United States government bonds in a sufficient amount to fully pay the then outstanding bonds and interest thereon, and, upon such deposit being made, the trustee may cancel the mortgage.

In case default is made in payment of bonds, or any of them, in whole or in part, or of any installment of interest thereon, when the same becomes due, the holder of the bonds may proceed against the governing authority of the municipality or district to enforce the pledge of income and revenues and foreclose the mortgage by seizure and sale of the property mortgaged, as if proceeding against a private person. But, bonds issued under the provisions of this Sub-part and the liability arising therefrom shall not be a charge upon the other income and revenues of the municipality or district issuing the bonds, and shall not be included in computing the indebtedness of the municipality or district for the purpose of determining any constitutional limitation.

§ 4226. Contesting election

For a period of sixty days from the promulgation of the result of the election, any person in interest may contest the legality of the election, the bond issue provided for, or the security to be given; after which time no one shall have any right or cause of action to contest the regularity, formality of legality of the election, bond issue, or the security given for the same, for any cause whatever; the legality shall be conclusively presumed, and no court shall have the authority to inquire into such matters.

§ 4227. Sale for less than par or diversion of proceeds prohibited

Bonds issued under the provisions of this Sub-part shall be sold at an interest rate not greater than five per cent per annum. Under no conditions shall they be sold at a price less than par. The proceeds thereof shall not be used for any purpose other than that for which the bonds issued, as set forth in the resolution ordering the election to authorize the issue.

§ 4228. Combination of two or more utilites

Any municipal corporation or district taking advantage of the provisions of this Sub-part may construct, acquire, extend, or improve two or more utilities (whether related or used in conjunction) and issue bonds as provided for herein secured exclusively, principal and interest, by mortgage on the lands, buildings, machinery and equipment and by pledge of the income revenues of the utilities.

§ 4229. Service charge where revenues of garbage or sewerage facilities are pledged

Where the revenues pledged to the payment of bonds under this Sub-part are revenues of a utility comprised of sewerage facilities or garbage facilities, the governing authority of the municipal corporation or district may impose against the owners of all real property in the municipal corporation or district a service charge for the facilities afforded by the utility, which charge shall not be a lien upon the property. The charges to be made shall be in amounts which the governing body shall determine in each year and shall be sufficient to provide for the cost of operating and maintaining the utility and to pay interest on and principal of the bonds secured by the revenues of the utility. No such charge shall be made against the owner of any property which is not benefited by the utility. A list of the names

of all owners against whom charges are made and the amounts of the charge made against each owner shall be certified by the governing authority to the official charged with the assessment of taxes against such property at such time and in such manner in each year so as to permit the amount of the charge to be carried upon the assessment roll of the real property in the municipal corporation or district. Each such charge shall be carried on the roll as a special item due by the owner of the property individually, and shall be identified on the roll as "Special Sewerage Charge or Special Garbage Charge, as the case may be, of ..... (inserting the name of the municipal corporation or district)." Such charges shall be paid to the official who collects the general taxes assessed against the real property located in the municipal corporation or district and shall be paid at the same time and in the same manner as general taxes are paid. Where the ownership of real property changes the municipal corporation or district may require any subsequent owner seeking sewerage or garbage service to apply therefor by proper application, whereupon the charges to be so imposed against such owner shall be assessed and collected in the manner hereinabove provided. The municipal corporation or district may pay the tax collecting official the same commission on the amounts collected by him as he receives for the collection of ad valorem taxes, and may pay the assessing official a sum sufficient to reimburse him for the additional expense occasioned by reason of listing the charges on the assessment roll. The amounts to be so paid to the assessor and collector shall be considered one of the costs of operating and maintaining the utility.

§ 4230. Commission of tax collector as part of maintenance cost

The governing authority of any municipality or dis-

trict may include in the maintenance cost of any sewerage or garbage district a sum sufficient to allow to the tax collector of the parish the same commission on the amount of the annual charges collected by him hereunder which the tax collector ordinarily receives under the existing laws for the collection of ad valorem taxes, and a sum sufficient to reimburse to the municipality or district and to the tax assessor the extra expense to which these authorities are subjected in levying and collecting the charges, the amount of which reimbursement in each case is to be fixed and determined by the governing authority.

SUB-PART C. PLEDGE OF REVENUES OF UTILITY

§ 4251. Bond issue

Any municipal corporation or any parish or any other political subdivision or taxing district authorized to issue bonds under Section 14, Article 14, of the Constitution of Louisiana, all of which are hereinafter in this Sub-part referred to as "municipal corporation" or "municipality" may, in order to construct, acquire, or improve a revenue producing public utility, either within or without its boundaries, obtain funds for the purpose by issuing revenue bonds. For the purposes of this Sub-part, the governing body of the municipal corporation shall be the body empowered to authorize and issue other bonds of the municipal corporation under the provisions of Section 14, Article 14, of the Constitution of Louisiana and Title 39, Subtitle 2, Chapter 4.

§ 4252. Requisites of Bonds

Bonds issued under this Sub-part shall be authorized by resolution of the governing body and shall be payable solely from the income and revenues to be derived from the operation of the utility. The bonds shall not constitute an

indebtedness or pledge of the general credit of the municipal corporation within the meaning of any constitutional or statutory limitation of indebtedness and shall contain a recital to that effect. They shall be in coupon form but may be made registerable as to principal if so provided in the resolution authorizing the issuance. The bonds shall be in the denomination of one hundred dollars or a multiple thereof, shall bear interest at a coupon rate not exceeding six per cent per annum, shall mature serially or otherwise in the manner provided by the governing body, but not later than forty years from their date, and shall be made payable at the place provided by the governing body. They may be made redeemable at the option of the issuing municipality prior to maturity at the premium (not greater than ten per cent of the principal amount thereof) which the governing body determines. The bonds shall be signed by the presiding officer and attested by the secretary or clerk of the municipality under the official seal of the municipality, in the manner provided in the resolution authorizing their issuance. Interest coupons to be attached thereto may be executed with the facsimile signature of the officers, and in the event that any officer whose signature appears on the bonds or coupons ceases to hold office before the delivery of the bonds to the purchaser, his signature shall nevertheless be valid and sufficient for all purposes. The bonds shall be sold in the manner and at the times which the governing body determines, except that in no event shall the bonds be sold at a price of less than par or bear an interest rate of greater than six per centum per annum.

§ 4253. Pledge of revenues of utility; receivership

Any bonds issued under this Sub-part shall be payable from and secured by the pledge of the revenues derived from the operation of the utility constructed, acquired, ex-

tended or improved with the proceeds thereof, subject only to the prior payment of the reasonable and necessary expenses of operating and maintaining the utility. Any holder of the bonds or of any of the coupons thereto attached may by appropriate legal action compel performance of all duties required of the governing body and officials of the municipal corporation by the provisions of this Sub-part. If any bond issued hereunder is permitted to go into default as to principal or interest, any court of competent jurisdiction may pursuant to the application of the holder of the bond, appoint a receiver for the utility, which receiver shall be under the duty of operating the utility and collecting and distributing the revenues thereof pursuant to the provisions and requirements of the resolution authorizing the bonds.

If more than one series of bonds is issued hereunder payable from the revenues of any utility, priority of lien on such revenues shall depend on the time of delivery of the bonds, each series enjoying a lien prior and superior to that enjoyed by any series of bonds subsequently delivered, except that where provision is made in the proceedings authorizing any issue or series of bonds for the issuance of additional bonds in the future on a parity therewith pursuant to procedure or restrictions provided in such proceedings, additional bonds may be issued in the future on a parity with such issue or series in the manner so provided in such proceedings. (As amended Acts 1955, No. 72, § 1; Acts 1956, No. 17, § 1.)

§ 4254. Bonds to constitute negotiable instruments

All bonds issued under the provisions of this Sub-part shall constitute negotiable instruments within the meaning of the negotiable instruments law.

§ 4255. Sinking fund

Any resolution authorizing the issuance of bonds hereunder shall provide for the creation of a sinking fund into which shall be paid from the revenues of the utility, subject only to prior payment of the reasonable and necessary expenses of operating and maintaining the utility, sums fully sufficient to pay the principal and interest of the bonds, and to create such reserve for contingencies as may be required by the resolution. The moneys in the sinking fund shall be applied to the payment of interest on and principal of the bonds or to the purchase or retirement of the bonds prior to maturity in the manner provided in the resolution.

The resolution authorizing their issuance may contain such covenants with the future holder of the bonds as to

(1) the management and operation of the utility,

(2) the imposition and collection of fees and charges for the products, commodities or services furnished thereby,

(3) the disposition of such fees and revenues,

(4) the issuance of future bonds and the creation of future liens and encumbrances against the utility and the revenues thereof,

(5) the carrying of insurance on the properties constituting the utility,

(6) the disposition of the proceeds of any such insurance, and

(7) other pertinent matters, deemed necessary by the governing body to assure the marketability of the bonds, provided such covenants are not inconsistent with the provisions of this Sub-part.

§ 4256. Charges for commodities or services provided by utility

When any municipality has issued bonds and has pledged the revenues of any utility for the payment thereof as herein provided, the municipality shall impose and collect fees and charges for the products, commodities and services furnished by the utility, including those furnished to the municipality itself and its various agencies and departments, in such amounts and at such rates as shall be fully sufficient at all times to (1) pay the expenses of opperating and maintaining the utility, (2) provide a sinking fund sufficient to assure the prompt payment of principal of and interest on the bonds as each falls due, (3) provide such reasonable fund for contingencies as may be required by the resolution authorizing the bonds, and (4) provide an adequate depreciation fund for repairs, extensions and improvements to the utility necessary to assure adequate and efficient service to the public. No board or commission other than the governing body of the municipality shall have authority to fix or supervise the making of these fees and charges.

§ 4257. Property of two or more utilities may be pledged

The governing body of the municipality may authorize bonds under this Sub-part payable from the revenues to be derived from two or more utilities owned and operated by the municipal corporation (whether or not such utilities are related or used in conjunction) for the purpose of constructing, acquiring, extending or improving any one or more of the utilities.

§ 4258. Election to authorize issuance of bonds

Before the resolution authorizing the issuance of bonds under this Sub-part is adopted by the governing

body, the question of the issuance of the bonds shall be submitted to and approved by votes of a majority in number and amount of the property taxpayers who vote at an election held hereunder. The proposition may be submitted at either a special or general election and all matters pertaining thereto, including the qualifications of voters and the manner of calling and conducting the election and canvassing and promulgating the results thereof, shall be governed by the provisions of Chapter 4, Sub-title 2, Title 39.

§ 4259. Refunding bonds

The governing body of any municipality which has heretofore issued or hereafter issues bonds payable from utility revenues under the provisions of this Sub-part or any other law may authorize the issuance of bonds for the purpose of refunding, extending and unifying the whole or any part of the principal, interest and redemption premiums on the outstanding bonds. The refunding bonds may either be sold and the proceeds applied to or deposited in escrow for the retirement of the outstanding bonds, or may be delivered in exchange for the outstanding bonds. The refunding bonds shall be authorized in all respects as original bonds are herein required to be authorized, except that no election shall be necessary in the event the refunding bonds are sold at public sale after advertisement in the manner provided by R.S. 39:570 and the annual principal and interest on the refunding bonds is less than the combined annual principal and interest on the bond issue or issues being so refunded, extended and unified. The governing body, in authorizing the refunding bonds, shall provide for the security of the bonds, the sources from which the bonds are to be paid and for the rights of the holders thereof in all respects as herein provided for other bonds issued under the authority of this Sub-part. The governing body may also provide that the

refunding bonds shall have the same priority of lien on the revenues pledged for their payment as was enjoyed by the bonds refunded. (As amended Acts 1962, No. 224, § 1.)

§ 4260. Contesting election and bonds; prescription

For a period of sixty days from the date of the promulgation of the result of any election held hereunder, any person in interest may contest the legality of the election, after which time no one shall have any cause of action to contest the regularity, formality or legality of the election for any cause whatever, it shall be conclusively presumed that every legal requirement has been complied with, and no court shall have authority to inquire into such matters after the lapse of sixty days. The resolution authorizing the issuance of bonds shall be published once in a newspaper published in the municipality, or if no newspaper is published therein, then in a newspaper published in the parish in which the municipality is located, or if no newspaper is published in the parish then in a newspaper published in an adjoining parish. For a period of thirty days from the date of the publication any person in interest may contest the legality of the resolution and of the bonds to be issued pursuant thereto and the provisions securing the bonds. After the expiration of thirty days no one shall have any right of action to contest the validity of the bonds or the provisions of the resolution pursuant to which the bonds were issued, and all the bonds shall be conclusively presumed to be legal, and no court shall thereafter have authority to inquire into such matters.

§ 4261. Service charge for sewerage and garbage facilities

Where the revenues pledged to the payment of bonds under this Sub-part are revenues of a utility comprised of sewerage facilities, or garbage facilities, the governing

authority of the municipality may each year impose against the owners of all real property in the municipality a service charge for the facilities afforded by the utility, which charge shall not be a lien upon the property. The charges shall be sufficient to provide for the cost of operating and maintaining the utility and paying the interest and principal of the bonds secured by the revenues of the utility. No charges shall be made against the owner of any property which is not benefited by the utility. A list of the names of all owners against whom charges are so made and the amounts of the charge made against each owner shall be certified by the governing authority to the official charged with the assessment of taxes against the property at such time and in such manner in each year as to permit the amount of the charge to be carried upon the assessment roll of the real property in the municipality. Each charge shall be carried on the roll as a special item due by the owner of the property individually and shall be identified on the roll as "Special Sewerage or Garbage Charge of ———— (inserting the name of the municipal corporation)". The charges shall be paid to the official who collects the general taxes assessed against the real property located in the municipality, and shall be paid at the same time and in the same manner as the general taxes are paid. Where the ownership of any real property changes, the municipality may require any subsequent owner seeking sewerage or garbage service to apply therefor, whereupon the charges imposed against the owner shall be assessed and collected in the manner hereinabove provided. The municipality may pay the tax collecting official the same commission on the amounts collected by him as he receives for the collection of ad valorem taxes, and may pay the assessing official a sum sufficient to reimburse him for additional expenses occasioned by reason of listing the charges on the assessment roll. The amounts

to be paid to the assessor and collector shall be considered one of the costs of operating and maintaining the utility.

§ 4262. No restriction of acts authorized

This Sub-part shall constitute full authority for the accomplishment of all acts herein authorized to be done. No other law restricting the carrying out of the acts authorized to be done shall be construed as applying to any proceedings had or acts done pursuant to this Sub-part.

SUB-PART D. CITIES OF 25,000 TO 250,000

§ 4281. Extension or improvement of municipally owned utility by city of 25,000 to 250,000

Any municipality having a population in excess of twenty-five thousand and less than two hundred fifty thousand owning and operating its electric power plant, waterworks, motor coach transportation, and sewerage system, may construct, maintain, extend, rehabilitate, enlarge or improve any municipally owned public utility either within or without its boundaries. In addition the municipality may consolidate and unite any non-revenue bearing utility with one or more revenue bearing public utilities, which, when so united and consolidated, shall be one unit and shall be considered and treated as a single revenue bearing utility.

§ 4282. Issuance of certificates of indebtedness

In order to obtain funds to construct, maintain, rehabilitate, extend, enlarge, or improve the municipally owned public utility the governing authority of the municipality may issue negotiable certificates of indebtedness and secure their payment by a pledge of the revenues and franchises of the revenue producing public utility, provided that the governing authority is first authorized to do so by

a majority of the qualified resident electors of the municipality voting in an election to be held in the manner provided below.

§ 4283. Certificates of indebtedness payable from revenues of utility; form and requisites; redemption; sale

Upon obtaining the authority from a majority of the qualified electors of the municipality voting in the election, the governing body of the municipality may issue negotiable certificates of indebtedness which shall be payable solely from the income and revenues to be derived from the operation of the revenue producing utility of the franchises thereof. These certificates of indebtedness shall not constitute an indebtedness or pledge of the general credit of the municipality within the meaning of any constitutional or statutory limitation of indebtedness and shall contain a recital to that effect. The certificates of indebtedness shall be in coupon form, but may be registerable as to principal if so provided in the proceedings authorizing their issuance. The certificates of indebtedness shall be in the denominations of one hundred dollars or a multiple thereof, shall bear interest at a coupon rate not exceeding six per cent per annum, shall mature serially or otherwise, (but shall not mature later than twenty years from the date of issuance) shall be made payable at the place either within or without the state provided by the proceedings authorizing their issuance, and may be made redeemable at the option of the governing authority of the municipality prior to maturity at premiums not greater than ten per cent of the principal amount thereof. The certificates of indebtedness shall be signed by the chief executive officer under the official seal of the municipality in the manner provided in the proceedings authorizing their issuance. Interest coupons to be attached thereto may be executed

with the facsimile signature of such officer, and in the event that any official whose signature appears on the certificates of indebtedness or coupons ceases to occupy his office before the delivery of the certificates to the purchaser, his signature shall nevertheless be valid and sufficient for all purposes. The certificates of indebtedness shall be sold at public sale after thirty days' advertisement in a newspaper in the municipality or in the parish in which the municipality is located, in such manner and at such times as the governing authority may determine, except that in no event shall the certificates be sold at less than their par value.

§ 4284. Pledge of revenues of utility; lien of certificate holders; enforcement of obligations of municipality; receivership

Any certificates of indebtedness issued hereunder shall be negotiable and shall be secured by a pledge of the revenues of all or a portion of the incoming revenues derived from the operation of the revenue producing public utility not otherwise pledged or dedicated. The amount of income and revenue so pledged and dedicated shall be sufficient at all times to pay the principal and interest of the certificates as they mature; but there shall be made proper provisions for the current maintenance and operation of the utility and for establishing a reasonable depreciation and replacement fund. A lien upon the revenues and franchises shall exist in favor of the holders of the certificates of indebtedness, and the holders of the coupons attached thereto for the payment thereof, the lien to be effective until all of the certificates and coupons shall have been paid in full. In the event of default of payment of principal or interest of the certificates or coupons, any holder thereof shall have a preferential right of action to enforce and protect by suit, action, mandamus, receiver-

ship, or other proceedings the lien hereby conferred. He may bring such proceedings to compel performance of all obligations required to be performed by the governing authority of the municipality by the provisions of this Sub-part.

If a receiver is appointed, he shall have an exclusive permit and franchise to maintain and operate the property and by all means to continue to supply to the public the commodities, products, or services theretofore supplied by the utility. He shall have the rights, powers, and privileges enjoyed by the municipality in the operation of the utility. This franchise shall continue for the period (not exceeding twenty years from the date of the receivership) fixed in the proceedings authorizing the certificates and shall not be subject to any statutory limitations pertaining to the granting of municipal franchises, not especially contained in this Sub-part. The receivership shall expire upon the payment in full of the certificates and coupons.

§ 4285. Priority of lien as between different series of certificates

If more than one series of negotiable certificates of indebtedness is issued hereunder, priority of lien and privileges on the revenues of the utility shall depend upon the time of delivery of the certificates, each series enjoying a lien prior and superior to that enjoyed by any other series of certificates subsequently delivered. However, as to any issue or series of certificates which is authorized as a unit to be delivered from time to time in blocks, it may be provided in the proceedings authorizing the issuance of the certificates that all such series or issues shall be equal as to lien and privileges regardless of the time of delivery.

§ 4286. Sinking fund

Whenever any certificates of indebtedness are issued in accordance with this Sub-part, the municipal authority shall provide for the creation of a sinking fund into which shall be paid from the revenues of the utility, subject only to prior payment of reasonable and necessary operation and maintenance expenses, sums fully sufficient to pay the principal and interest on the certificates, and to create reserves for contingencies provided in the resolution and election. The moneys in the sinking fund shall be applied to the payment of the principal and interest of the certificates or to the purchase or retirement of the certificates prior to maturity in the manner provided.

§ 4287. Charges for commodities or services provided by utility

When any municipal corporation has issued certificates of indebtedness hereunder and has pledged the revenues of any utility for the payment thereof, the municipality shall impose and collect fees and charges for the products, commodities, and services performed by the utility, in amounts and at rates fully sufficient at all times to

(1) pay the expenses of operating and maintaining the utility;

(2) provide a sinking fund sufficient to insure the prompt payment of the certificates of indebtedness and interest thereon as they fall due;

(3) provide such reasonable funds for contingencies as may be required; and

(4) provide an adequate depreciation fund for repairs, extensions, and improvements to the utility necessary to insure adequate and sufficient service to the public. There

shall be no charge for services to the municipality itself or to its agencies and departments. The governing authority of the municipality or any duly appointed or qualified receiver shall have the exclusive authority to fix or supervise the making of these fees and charges.

§ 4288. Refunding certificates

The governing authority of a municipality which issues certificates of indebtedness under this Sub-part, may authorize the issuance of certificates of indebtedness for the purpose of refunding outstanding certificates.

Refunding certificates may either be sold and the proceeds applied to the retirement of the outstanding certificates, or may be delivered in exchange for the outstanding certificates. The refunding certificates shall be authorized in all respects as original certificates are herein required to be authorized, and the governing authority shall provide for the security of the refunding certificates and for the rights of the holders thereof in all respects as those herein authorized to be provided for under the authority of this Sub-part. The governing authority may also provide that the refunding certificates shall have the same priority of lien on the revenues pledged for their payment as was enjoyed by the certificates refunded.

§ 4289. Election to authorize issuance of certificates of indebtedness; resolution; notice of election; ballots; election contests

Whenever the governing authority of a municipal corporation desires to issue certificates of indebtedness as provided herein, it may, by resolution adopted by a vote of two-thirds of the members of the governing authority, order an election to be held to determine whether or not it is the wish of the qualified resident electors of the munic-

ipality that the certificates of indebtedness be so issued and secured. The resolution shall state specifically the amount of the certificates of indebtedness proposed to be issued, the number of years that they are to run, the maximum rate of interest they shall bear, the purpose or purposes for which they are to be issued, a description of the properties for which they are to be issued, a description of the properties of which the incomes and revenues are to be pledged for the security of the certificates of indebtedness, and shall designate the date of the election and the polling places.

Notice of the election shall be given by publication for thirty days in a newspaper published in the municipality or in the parish in which the municipality is situated. The notice shall embrace substantially all matters required to be set forth in the resolution requiring the election and shall be signed by the chief executive officer of the municipality.

The election shall be held in accordance with the rules and regulations for general state elections. Ballots shall be substantially in the following form:

"Shall the governing authority of the City of ..... be authorized to issue certificates of indebtedness in the sum of ..... Dollars to run for ..... years, bearing interest not to exceed ..... per centum per annum, payable (annually or semiannually) for the purpose of ....., to be secured by a pledge of income, revenues, and franchises of .....?"

To vote in favor of this proposition the voter will make a cross mark (X) under the word "Yes" and to vote against it, the voter will mark a cross mark (X) in the space underneath the word "No".

YES	NO

Any person interested shall have the right to resort to the district court of the parish in which the municipality is situated on order to contest the election or the issuance of certificates thereby authorized, provided suit is filed within sixty days from the date of promulgation of the returns of the election. After this time no court shall entertain the suit.

§ 4290. Procedure provided not exclusive; other laws inapplicable

The procedure provided for in this Sub-part shall not be exclusive. But no other provisions of law pertinent to the construction, acquisition, extension, or improvement of public utilities, or to the issuance of certificates of indebtedness, the granting of franchises, the creation of pledges, or the adoption of proceedings by the governing authority shall be construed as applying to any proceedings had or acts done under this Sub-part.

Title 39—Public Finance

Chapter 4—Bonded Indebtedness and Special Elections

PART II. ELECTIONS

§ 501. Elections

Except as otherwise provided in special cases, no subdivision may incur any debt, issue any bonds, levy any special tax, or assume any indebtedness unless it has been authorized by vote of a majority in number and amount of the property taxpayers qualified to vote under the constitution and laws of this state who vote at an election hereunder. The governing authority of any subdivision may call a special election for any of these purposes at any time; and it shall call an election for any of these purposes when requested so to do by the petition in writing

of one-fourth of the property taxpayers eligible to vote at the election.

§ 502. Resolution calling election

The election shall be ordered by resolution which shall state the purpose for which it is called.

If the proposition is to incur debt and issue negotiable bonds under Part III of this Chapter,[1] the purpose for which the debt is to be incurred, the amount of the debt, the number of years for which the bonds are to run, and the maximum rate of interest to be paid shall be stated.

If the proposition is to levy a special tax under Part IV of this Chapter,[2] the rate, object, and purpose for which the tax is to be levied, and the number of years it is to run must be stated. ([1]R.S. 39:551—39:670. [2]R.S. 39:701—39:706.)

§ 503. Notice of election

Notice of the election shall be given embracing substantially all matters required to be set forth in the resolution ordering the election, and shall set forth further that the authorities ordering the election will, in open session, at an hour and place named, proceed to open the ballot boxes, canvass the returns and declare the result. The notice shall be published for thirty days in a newspaper published in the subdivision; or if there is no newspaper published therein, in a newspaper published in the parish; or if there is no newspaper published in the parish, in a newspaper published in an adjoining parish, and by posting in three public places in the subdivision ordering the election. Four publications in a newspaper once a week, shall constitute a publication for thirty days;

provided thirty days intervene between the date of the first publication and the date of the election.

§ 504. Polling places; ballots

The governing authority ordering the election, shall designate the polling places; provide the ballot boxes; ballots; valuations of property and compiled statement of the voters in number and amount, and fix the compensation of the election officers. It shall appoint for each polling place, three commissioners and one clerk of election, all of whom shall be registered voters.

§ 505. Election officers; substitutes

If any commissioner or clerk of election is unable, or if he fails or neglects to attend or serve at the polling place designated, at the hour fixed for opening, or within one hour thereafter, the commissioners present shall appoint, or in the absence of all commissioners the voters present shall elect the necessary number of commissioners and clerks, who shall have the same powers, compensation and duties, as other commissioners and clerks and shall serve in the place and stead of the absentee or delinquent appointees.

§ 506. Election officers; oaths

Commissioners and clerks of elections, before opening the polls, shall be sworn to perform all the duties incumbent on them as such, the oath to be taken before any officer authorized to administer oaths, or by the clerk, and each commissioner before any other commissioner. The commissioners of election may administer any oath and receive any affidavit provided for in this Chapter.

§ 507. Penalty for violations

The commissioners and clerks of elections held under the provisions of this Chapter shall have the same powers and duties in conducting the elections and in preserving order at the polls as are conferred and imposed upon similar officers under the general election laws of this state. Whatever is declared in the general election laws to be a felony, other crime or misdemeanor, shall be the same for any election held under the provisions of this Chapter and shall be punished in the same manner.

Any wilful failure or neglect to comply with the requirements of this Chapter or any wilful violation by any officer, agent or employee of any subdivision, availing itself of the provisions of this Chapter, shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars or by imprisonment not exceeding one year, with or without hard labor, or by both fine and imprisonment.

§ 508. Qualiifcations of voters

Only property taxpayers qualified as electors under the constitution and laws of this state are entitled to vote in any election held under the provisions of this Part. The qualifications of taxpayers as voters are those of age, residence, and registration as voters, without regard to sex. There shall be no voting by proxy.

With reference to Part IV of this Chapter[1] if the limits and boundaries of any municipal corporation has been extended and the assessment roll that is to include the property in the extended limits has not already been made for the municipal corporation, those who have become property taxpayers by the extension of the limits and who are otherwise qualified to vote shall be permitted to vote in

the election and the assessed valuation of their property shall be ascertained by reference to the last assessment roll of the parish. (1R.S. 39:701-39:706.)

§ 509. Use of tax receipts

A. In all elections held under the provisions of this Part and in all other elections whatsoever held under any other laws of this state where the only question submitted is the incurring of debt and issuing of bonds or other evidences of debt and/or the question of levying special taxes, the voter shall use his tax receipt as obtained from the tax collector's office in determining the amount of assessment that shall be voted.

B. The registrar of voters shall furnish to the election commissioners appointed to hold such election the precinct binders showing those eligible to vote in said election. A taxpayer entitled to vote in said election shall present to the commissioners of election his tax receipt with the valuation of such taxpayer's property as shown by the assessment roll last made and filed prior to such election; provided, however, that when it is impossible for any taxpayer to present his tax receipt to show the valuation of his property, he shall be permitted to vote by the use of the copy of the tax receipt, which the commissioners shall find in the precinct binders. In case of loss of the original tax receipt and copy thereof, the commissioners of election may receive affidavits of such taxpayer's right to vote and of the proper assessed valuation of his property, which affidavits shall be attached to such taxpayer's ballot.

C. The tax collector in each of the sixty-four parishes shall make tax receipts for each taxpayer at the time the taxes are paid. Such tax receipts shall be made in a minimum of an original and three copies. The original shall go

to the taxpayer and one copy to the registrar of voters, which shall be placed in the proper precinct binder and forwarded to the polls on election day. The additional copies shall be for the use of the tax collector.

D. Notwithstanding any provision of any law to the contrary, the provisions of this Section, with regard to the use of tax receipts shall be applicable at each election in this state in which there is submitted to the qualified property taxpayer of any area of the state the question of incurring debt and issuing bonds or other evidences of debt therefor or the question of levying any tax. (As amended Acts 1964, No. 399, § 2; Acts 1966, No. 500, §§ 2, 3.)

§ 510. Challenging votes

If the vote of any taxpayer is challenged, the commissioners of election shall permit him to vote and shall receive in writing the grounds of challenge signed by the challenger, together with the challenged taxpayer's statement of his asserted right to vote and the challenge and statement shall be attached to the ballot.

§ 511. Form of ballot

If more than one proposition is submitted at the same special election, each proposition shall be so submitted as to enable the voter to vote thereon separately. The ballots to be used at special elections shall be in substantially the following form:

A. FOR THE INCURRING OF BONDED INDEBTEDNESS

Shall .....

(Name of Subdivision)

incur debt and issue bonds to the amount of.....

..... YES

Dollars,

to run ..... years,

from date thereof, with interest, at the maximum rate

of .....

per cent per annum for the purpose of.....

..... NO

Taxable valuation $ .....

.....

(Signature of Voter)

Notice to Voters: To vote in favor of the proposition submitted on this ballot, place a cross (X) mark in the square after the word "YES"; to vote against it, place a similar mark after the word "NO".

B. FOR THE LEVYING A TAX

Proposition to levy a .....
(Rate)

mill

tax on all the property subject to State taxation

in ..... YES
(Subdivision)

for the period of .....
(Term)

for the purpose of.....

---------- NO

(Here state the purpose of the tax)

Taxable valuation $ ----------

(Signature of Voter)

Notice to Voters: To vote in favor of the proposition submitted upon this ballot place a criss (X) mark in the square after the word "Yes"; to vote against it place a similar mark after the word "No".

§ 512. Voting

Each voter's name shall be written on his ballot. The commissioners of election shall receive the ballot of each voter, check his name on the list of voters furnished by the registrar, enter and number his name on the list of taxpayers voting, and immediately deposit his ballot in the ballot box, reserving to each voter the right to so fold his ballot that it shall not be known at the time of voting whether he voted for or against the proposition or propositions submitted. If the election is being held in a parish where the permanent registration laws are in force, the procedure in connection with the precinct registers shall be the same as that provided for in Part X of Chapter 1 of Title 18 of the Louisiana Revised Statutes of 1950.[1] (As amended Acts 1964, No. 399, § 2.) ([1]R.S. 18:231 et seq.)

§ 513. Opening and closing polls

The polls shall open on the day appointed, at seven o'clock a. m., and remain open until and not later than six o'clock p. m. No election shall be vitiated by a failure to open the polls at the time prescribed, or by closing before the time prescribed, unless on a contest, it be established

that voters were thereby deprived of votes sufficient in number and amount to have changed the result of the election.

§ 514. Counting ballots; precinct registers

A. Immediately after the closing of the polls, the commissioners shall, in the presence of the bystanders, open the ballot boxes; count the ballots found there; check the same with the list of voters; proceed to count the votes in number and amount; keep tally sheets in duplicate showing the votes in favor of and against the proposition or propositions submitted, and showing the valuation of property in favor of and against same; and make compiled statements in duplicate of the vote in number and amount, both in favor of and against each proposition or propositions.

B. After swearing to the correctness of the numbered list of voters, the duplicate tally sheet and duplicate compiled statements, the commissioner shall deposit the ballots, the registrar's list of voters, the numbered list of taxpayers voting, one duplicate tally sheet, and one duplicate compiled statement, in the ballot box, immediately seal the ballot box and, within forty-eight hours after the closing of the polls, deliver the sealed ballot box with its contents to the authorities ordering the election. Within the same period they shall deliver the duplicate tally sheet and the duplicate compiled statement to the clerk of the district court of the parish in which the election was held, who shall file them in his office. If the election is being held in a parish where the permanent registration laws are in force, the procedure in connection with the precinct registers shall be the same as that provided for in Part X of Chapter 1 of Title 18 of the Louisiana Revised Statutes of 1950.[1]

C. If the election commissioners on counting the ballots find that they do not correspond with the list of voters, they shall, before examining and counting the ballots, examine them for the purpose of finding the discrepancy and if it should be found that any ballots have been duplicated they shall be destroyed or, if it be found that the name of a voter has been omitted from the list of persons voting, it shall be added to the list. (As amended Acts 1964, No. 399, § 2.) (1R.S. 18:231 et seq.)

§ 515. Canvass of returns

On the day and at the hour and place named in the notice of election, the authorities ordering the election shall in public session open the ballot boxes, examine and count the ballots in number and amount, examine and canvass the returns, and declare the result of the election. The result shall be promulgated by publication in one issue of a newspaper published in the subdivision, or if there is none, in a newspaper published in the parish, or if there is none published in the parish, in the newspaper published in an adjoining parish.

§ 516. Process verbal

The authority ordering the elections shall keep a proces verbal of the canvass and shall forward a copy to the Secretary of State, who shall record it; another copy to the clerk of the district court, who shall record it in the mortgage records; and the remaining copy shall be retained in the archives of the office of the authority ordering the election.

§ 517. Preservation of ballots

The custodian of the archives or records of the authority ordering the election shall preserve for a term of

three months from the date of the promulgation of the election, the ballots and other returns.

§ 518. Contests

For a period of sixty days from the date of promulgation of the result of any election held under the provisions of this Part, any person in interest may contest the legality of the bond issue provided for, the tax authorized or the assumption of debt provided for any cause, after which time, no one may contest the legality, formality or regularity of the election or debt assumption for any cause whatsoever. If the validity of any election is not raised within the sixty days herein prescribed, the authority to issue the bonds, and to levy the tax, or assume the debt and the regularity thereof, shall be conclusively presumed, and no court shall have authority to inquire into such matters.

With reference to Part III (A)[1] of this Chapter, if any resolution adopted or proceeding had more than thirty days after the promulgation of the result of the election, no contest, action or proceeding to question the validity or legality of the resolution or proceeding so adopted shall be begun in any court by any person for any cause whatsoever, after the expiration of thirty days from the date when the resolution was adopted or proceeding had. ([1]R.S. 39:351-39:578.)

II. LOUISIANA CONSTITUTION OF 1921

Article 14—Parochial and Municipal Affairs

Section 14—Subdivisions of State; creation; indebtedness; Bond issues special taxes

(m). Revenue bonds; acquisition, etc., of utilities. For the purpose of constructing, acquiring, extending or improving any revenue-producing public utility, the Legislature may authorize municipal corporations to issue bonds secured exclusively, principal and interest, by mortgage on the lands, buildings, machinery and equipment and by pledge of the income and revenues of such public utility. Such bonds shall not be a charge upon the other income and revenues of the municipality and shall not be included in computing the indebtedness of the municipality for the purpose of any limitation herein.

For the purpose of constructing, acquiring, extending or improving any revenue producing public utility, as defined by the Legislature, the Legislature may authorize any political subdivision or taxing district authorized to issue bonds under the authority of ths Secton 14, excluding municipal corporations, to issue its revenue bonds; which bonds shall be fully negotiable, shall bear interest at a coupon rate not exceeding six per cent per annum, shall mature serially or otherwise not later than forty years from their date, shall not be a charge upon any income or revenue of the district or municipality not derived from the utility, and shall not be included in computing the indebtedness of the subdivision or distrct, for the purpose of any limitation contained in the Constitu-

tion. The Legislature shall provide that any bonds issued hereunder shall be securd by a conventional mortgage on the entire utility so constructed, acquired, extended or improved, and by pledge of the income and revenues thereof, sufficient in amount to pay principal of and interest on said bonds as they severally mature; which security may be foreclosed by seizure and sale of the encumbered property in the manner provided by law for the foreclosure of conventional mortgages, including the right to executory process, and the Legislature shall provide for the granting of a franchise to the purchaser at foreclosure sale, if any, which franchise shall run for a period not exceeding forty years from the date of such sale and shall be subject to any other constitutional or statutory limitations pertaining to the granting of municipal franchises. The Legislature shall also provide that when bonds are issued hereunder, the issuing subdivision or district must impose rates for the services rendered by the utility fully sufficient to operate and maintain the utility, to pay principal of and interest on the bonds, and to provide an adequate fund for depreciation, improvements and extensions, and provisions may be made for encumbering two or more utilities for the construction, acquisition, extension or improvement of any one or more of the utilities encumbered. The Legislature may, in its discretion, require an election by the tax-paying voters of the subdivision or district as a condition precedent to the issuance of such bonds, in which case the voters' qualifications shall be governed by the provisions of this Section XIV pertaining to other bond elections. If the validity of any bonds issued hereunder he not questioned in litigation commenced within thirty days from the date of publication of the ordinance or resolution authorizing the issuance of such bonds, the authority to issue the bonds, the legality thereof, and the security therefor, shall be conclusively presumed and

no court shall thereafter have authority to inquire into such matters. Any law or laws enacted by the Legislature for the purpose of putting this added paragraph to Subsection (m) into effect and which may have been finally passed by the Legislature after the passage of the joint resolution proposing this amendment and prior to the adoption of said amendment by the electors of Louisiana, shall be valid and fully effective if and when said proposed amendment be adopted.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 708

JOSEPH CIPRIANO,

Appellant,

CITY OF HOUMA, C. LESLIE BROUSSARD, Mayor, SEBASTIAN L. DAVID, CHARLES DAVIDSON, PETER BOURGEOIS, JR., SAMUEL LUSCO and WILBERT P. BONVILLAIN,

Appellees.

On Appeal from the United States District Court for the Eastern District of Louisiana

BRIEF FOR DEFENDANTS — APPELLEES

[redacted]

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 705

JOSEPH Q. CIPRIANO,

Appellant,

versus

CITY OF HOUMA, G. LESLIE BROUSSARD, Mayor, CHRISTIAN L. OLIVIER, CHARLES DAVIDSON, PETER BOURGEOIS, JR., SAMUEL LUSCO and WILBERT P. BONVILLAIN,

Appellees.

On Appeal from the United States District Court for the Eastern Division of Louisiana.

BRIEF FOR DEFENDANTS — APPELLEES

STATEMENT

On September 12, 1967, the Mayor and Board of Aldermen of the City of Houma, defendants herein, adopted a resolution ordering and calling a special election to be held in said City under the authority conferred by Part II, Chapter 4, Title 39 and Sub-Part C, Part I, Chapter 10, Title 33 of the Louisiana Revised Statutes, and other constitutional and statutory authority supplemental thereto, including Article XIV,

Section 14(m) of the Louisiana Constitution for the year 1921 as amended. At said election, there was submitted to the registered property taxpayer voters a proposition authorizing the issuance of $10,000,000.00 of utility revenue bonds for the purpose of constructing, acquiring, extending or improving the combined electric light and power plant system, water supply purification and distribution plant system and natural gas system of said City.

On October 24, 1967, the election was held in the City of Houma and at said election 1,828 voters representing an assessed valuation of $2,736,258.00 voted in favor of the proposition submitted and 896 voters representing an assessed valuation of $1,108,268.00 voted against the proposition. Accordingly, the said proposition was carried by a majority of 932 votes in number, representing an assessed valuation of $1,627,990.-00. The election was duly promulgated by the City's governing authority on October 25, 1967. Some 55 days after the date of said election, plaintiff, a registered voter of the City who does not own real property, filed his action seeking relief as set forth in his complaint. Plaintiff contends that he is a member of a class of 6,926 registered non-property taxpaying voters in the City of Houma and that he and all members in his class were not entitled to vote at said election because of the provisions of Louisiana law requiring that a voter be a qualified resident property taxpayer of the City. Plaintiff further contends that he and the members of his class were deprived of certain civil rights granted by the United States Constitution in not being eligible to vote at said election and that the statutes authorizing the election are in violation of the

equal protection and due process clauses of the United States Constitution.

Although the record reveals that the total number of registered voters in the City of Houma on October 24, 1967 was 11,606 and the total number of property taxpaying voters on said date in the City was 4,680, the statement that the total number of non-property taxpaying registered voters amounted to 6,926 is somewhat misleading. Louisiana is a community property state and allows the husband and wife to vote separately and split the property assessment of their real property at a bond election, such as in the instant case. Consequently, the 4,680 property taxpaying voters reflected in the record are actually those registered voters whose names appear on the assessment rolls of the City as property owners and does not include the spouses of such assessed property owners who are registered voters eligible to vote and split the assessment with the assessed property owners.

The matter was tried before a three-judge court and the majority of the trial court found for the defendants, holding that the statutes pursuant to which the defendants called the election as aforesaid were not in violation of the Fourteenth Amendment of the United States Constitution. Plaintiff-Appellant has appealed from the trial court directly to this Court.

ARGUMENT

I

THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT OF THE CONSTITU-

TION OF THE UNITED STATES DOES NOT COMPEL A STATE LEGISLATURE TO GRANT ALL REGISTERED VOTERS OF A COMMUNITY THE RIGHT TO PARTICIPATE IN A LOCAL ADMINISTRATIVE ELECTION APPROVING THE ISSUANCE OF UTILITY REVENUE BONDS. *HARPER V. VIRGINIA STATE BOARD OF ELECTIONS* IS NOT CONTROLLING IN THIS INSTANCE. THE SPECIAL INTEREST OF THE PROPERTY TAXPAYER CONSTITUTES A RATIONAL BASIS FOR CLASSIFICATION.

While plaintiff contends he was denied due process of law and equal protection under the Fourteenth Amendment of the Constitution, he does not seriously raise the issue of due process or cite authorities which support such denial. His real complaint is the denial of equal protection of the law and plantiff relies solely upon *Harper v. Virginia State Board of Elections*, 383 U.S. 663, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966) to support his position. The *Harper* case only prevents states from fixing voter qualifications which "invidiously" discriminate. It does not declare that the Fourteenth Amendment abrogates the power of the states to classify voters. In deciding the *Harper* case, this Court was concerned solely with those requirements for voting which relate to "one's ability to participate intelligently in the electoral process" and in reaching its decision, the Court cited authorities which involved the election of officials for general governmental purposes. The Court concluded that a state violates the equal protection clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee the electoral standard. However, there appears to be a distinct voting requirement rationale which focuses on the "interests" of the voter rather than upon

his competence of affluence. Residence requirements are one example of the application of that rationale, and taxpayer requirements are another. That "affluence" is not a constitutionally unpermissible principle of classification is evidenced by such acceptable concepts as a taxpayer's suit. Equal protection does not require identity of treatment. It only requires that classification rest on real and not feigned differences, that the distinction have some relevence to the purpose for which the classification is made and that the different treatments be not so disparate, relative to the difference in classification, as to be wholly arbitrary. *Walters v. City of St. Louis*, 347 U.S. 231, 237, 74 S.Ct. 505, 98 L.Ed. 660 (1954).

There is a vast distinction to be made in a case such as this, involving, as it does, a local administrative election, and the exercise of the voting franchise for selection of legislative officers responsible, in the final analysis, for the course of government. The present statutory election is merely a restriction imposed by the Louisiana Legislature as a matter of public policy; there is no inherent federal or state constitutional requirement that any election be held. The provisions of the Louisiana constitution and statutes pursuant to which the defendant (City of Houma) is authorized to issue utility revenue bonds vests complete control and discretion in the governing authority (the elected officials) to initiate and ultimately authorize the issuance of such bonds, and also requires approval from a separate state board (Louisiana State Bond and Tax Board). The submission of the proposition to the electorate is only one of several steps to be taken in the issuance of such bonds and the consent of the electorate is purely a veto power. Furthermore,

even if all of the approvals as provided by the statutes and constitution are obtained, including the electorate, the bonds cannot be issued and sold without the elected officials of the City actually authorizing the ultimate issuance and sale thereof by separate and affirmative official action. Under the circumstances, if property owners in the instance before this Court have a special interest in the subject matter to which the statute is directed, considered in light of the kind and purpose of the election required by the statute to be held, such special interest constitutes a rational basis for classification. There is no "invidious" discrimination here, absent which the statute must be held constitutional. This is a local administrative election, the essence of which is to perform an advisory function dealing not with the legislative or governmental character of the political subdivision, but with the purely private and business, or proprietary, functions of the political subdivision.

The undertaking of the ownership of a public utility, even though the bonds issued for the acquisition of the facility are payable only from revenues, commits the public corporation to the management and operation of the public enterprise, and a quasi-corporate function. We submit that the property owners whose property and property values will be affected by the efficiency and adequacy of the utility serving their property do have an additional and special pecuniary interest in this decision. While it is true that all users of the system pay for the service, the initial decision to publicly own and operate the utility, or to improve it after acquisition, are matters of special and

peculiar interest to the property owners (whether as occupants, landlords or owners of unimproved property), because the value and even the basic security of their investment in the property are at stake, dependent as they are on proper, reasonable, and well managed utility service. The non-property owner shares none of this particular concern nor bears any of this particular risk, and if the wrong decision is made or service is poor, his control, like that of the property owner, is through the ballot box at the election for municipal officials.

Plaintiff fails to give recognition to the fact that the rates and charges which must be paid by the citizens of the City are fixed solely in the discretion of the elected officials of the City. Whether the citizen be a property owner or not, if he is a registered voter he has the right to elect the public officials who fix the utility charges for the operation of the utilities system and who have full discretion and control over the issuance and sale of revenue bonds. The voter's representative therefore initiates and finally approves the issuance of the bonds, and fixes the rates and charges to service such debt; the voter cannot be expected to vote twice on such an administrative function.

The relief which plaintiff is asking this Court to grant is inappropriate to the right contended for. Plaintiff is not seeking a declaration of his right to vote at some specific election in the future, but to enjoin the issuance of bonds voted at an election in which he did not even attempt to participate. If injunctive relief was the real purpose of plaintiff's suit, he should have instituted such action prior to the date on which

the election was held. In his own testimony he admitted that he did not consider this procedure since he felt the election would be defeated, and then waited 55 days after the date of the election to file this action.

II

IF THE ELECTION STATUTES OF THE STATE OF LOUISIANA RELATIVE TO UTILITY REVENUE BOND ISSUES ARE HELD TO BE IN VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE UNITED STATES CONSTITUTION, THE EFFECT OF THE DECISION OF THIS COURT MUST BE PROSPECTIVE ONLY AND NOT RETROSPECTIVE.

Should this Court determine that the election statutes pursuant to which the City of Houma held the revenue bond election at issue are in violation of the equal protection clause of the United States Constitution, the Court must give very serious consideration to the prospective or retrospective effect of such a decision. Plaintiff in his brief argues that it is only necessary that the Court give prospective effect to any decision declaring said statutes unconstitutional. Nevertheless, plaintiff further contends that since he instituted this action within the 60-day prescriptive period or statute of limitations provided in the Louisiana statutes, he should be granted the relief petitioned for. If the Court should adopt plaintiff's position, all elections held subsequent to October 24, 1967 and bonds issued thereunder would be valid and legally issued where no challenge to said election was filed within the 60-day prescriptive period, but the election held in the City of Houma on October 24, 1967 would be invalid. It is obvious that plaintiff's pos-

ition is inconsistent in that this Court could not declare the Louisiana statutes unconstitutional prospectively but void the election held by defendant on October 24, 1967, without impairing those elections held pursuant to this same statutory authority subsequent to October 24, 1967 and the bonds issued as a result thereof. A state statute of limitations cannot deprive or deny a federal court from voiding a state law which is repugnant to the United States Constitution. Plaintiff's argument that authority or the right of defendant to issue bonds is only vested after the running of the 60-day prescriptive period from the date of promulgation of the election returns is wholly unsupported by the Louisiana statutes upon which he relies.

Since October 24, 1967, numerous municipalities in Louisiana and other political subdivisions in this State and elsewhere have issued and sold bonds at elections held subsequent to and prior to said date. The only logical prospective effect of the decision of this Court is to have the decision take effect prospectively from the date of the rendition of the decision. Other states' statutes which authorize revenue bonds pursuant to a taxpayers' election do not have a 60-day prescriptive period or similar statute of limitations as provided in the Louisiana statutes, and this decision, which will have a nationwide effect on all revenue bond issues authorized pursuant to a taxpayer's election, would necessarily void and invalidate all such bond issues and elections if the position advocated by plaintiff is adopted. Precedent for the prospective effect of an adverse decision of this Court as to the future only is set forth in the legislative reapportionment decisions of this Court as well as in the

recent case of *Allen v. State Board of Elections,* Nos. 3, 25, 26 and 36 - October Term, 1968; 89 S.Ct. 817 (1969). Either the election and the issuance of bonds authorized thereunder must be held unconstitutional from a given date, i.e., the date of the decision of this Court or the date of the election held in the City of Houma, or the Court must give total retroactive effect to its decision. To give total retroactive effect to such a decision would cause a financial calamity for municipal debt securities in the United States. To give prospective effect to such a decision from October 24, 1967 would likewise cause serious and irreparable damage to political subdivisions of these United States and to bondholders who have purchased revenue bonds subsequent to October 24, 1967 authorized at elections held under statutes requiring a taxpayer's election.

The defendant, City of Houma, and many other municipalities in the State of Louisiana have for many years issued revenue bonds under the authority of the statutes challenged by plaintiff. If these statutory provisions are held to be in violation of the United States Constitution, the retrospective effect of such a decision would have the effect of invalidating all revenue bonds heretofore issued by all municipalities in the State, as well as other states and political subdivisions throughout the United States which have issued bonds under similar voting requirement statutes. Consider the effect of such a retrospective ruling on the bondholders and the impairment of their contracts with issuing authorities. In only a very limited area of Louisiana, there are outstanding at this time revenue bonds payable from the revenues derived from the ope-

ration of municipal utilities systems (not including bonds previously refunded) of the Cities of Alexandria, Franklin, Houma, Lafayette, Monroe, Morgan City and Thibodeaux amounting to approximately $120,000,000.00. (Source: Louisiana Municipal Bond Service, Inc., New Orleans, La.). Although it is difficult to accurately estimate the amount of securities issued by political subdivisions of other states under similar taxpayers elections, we venture to guess that it is in the billions of dollars.

The authority cited by plaintiff for prospective relief is the leading case of *Linkletter v. Walker*, 381 U.S. 618, 85 S.Ct. 1731, 14 L.Ed.2d 601 (1965). We also believe that it is controlling in the instant case. Vested rights have become final insofar as outstanding bonds issued by the City of Houma and other municipalities are concerned and, likewise, approval has been evidenced by the voters of the City of Houma on October 24, 1967 insofar as the $10 million bond issue is concerned. Plaintiff, desiring to enjoin the election, should have instituted his action for injunctive relief prior to the date of the election. Instead, his challenge was not filed until a considerable period of time elapsed thereafter. Actually, the relief prayed for by plaintiff has now become moot as is set forth in the next section of this brief.

III.

THE INJUNCTION RELIEF PRAYED FOR BY PLAINTIFF-APPELLANT HAS NOW BECOME MOOT.

The Governor of the State of Louisiana, having knowledge of this suit and the potential effect an adverse decision might have upon the credits of the State

of Louisiana and its political subdivisions, included in his call for the Extra Session of the Louisiana Legislature held in the latter part of 1968 the enactment of legislation which would permit the City of Houma and other political subdivisions of the State to issue utility revenue bonds without any further election. Act No. 33 of the Extra Session of the Louisiana Legislature for the year 1968, amending Section 4258 of Title 33 of the Louisiana Revised Statutes of 1950 (included in the appendix of this brief), became effective on January 6, 1969 and validated all utility revenue bonds voted at elections held prior to the enactment of said act. This legislation has specifically validated and authorized the issuance of $10 million of utility revenue bonds approved by the electorate of the City of Houma on October 24, 1967 without any further election approval. The pertinent provision of this act is as follows:

> "In the event a property taxpayers' election has heretofore been held and promulgated approving the issuance of bonds under this Subpart, as contemplated in subparagraph (a) above, the governing body may proceed with the issuance and sale of such bonds without complying with the provisions of this section and without any further election approval."

It is clear from the foregoing that the Louisiana Legislature intended to validate all bonds previously voted under Sub-Part C of Chapter 10, Title 33 of the Louisiana Revised Statutes of 1950, without any further election approval, where the results of the election have been duly promulgated, whether the election was valid or invalid. The authority for the Louisiana Legislature

to require or not require an election is discretionary under the provisions of Article XIV, Section 14(m) of the Louisiana Constitution for the year 1921, as amended.

Notwithstanding an adverse decision of this Court which would have the effect of declaring the election statutes of the State of Louisiana relative to utility revenue bonds repugnant to the equal protection clause of the United States Constitution, and whether such decision should have retrospective or prospective effect, this Court cannot now grant plaintiff the relief prayed for since the Louisiana Legislature has validated the bonds approved on October 24, 1967 without any further election approval. Accordingly, injunctive relief prayed for by plaintiff in this case has now become moot.

CONCLUSION

For the reasons stated it is respectfully submitted that the judgment of the Court below should be affirmed.

Respectfully submitted,

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April 7, 1969

CERTIFICATE

I hereby certify that a copy of the foregoing Brief for Defendants-Appellees has been served upon opposing counsel of record by depositing a copy thereof in the United States Mail, postage pre-paid, addressed to his address of record.

New Orleans, Louisiana

April 7, 1969

E. E. HUPPENBAUER, JR.

APPENDIX

ACT 33 OF THE EXTRA SESSION OF THE LOUISIANA LEGISLATURE FOR THE YEAR 1968.

AN ACT

To amend and reenact Section 4258 of Title 33 of the Louisiana Revised Statutes of 1950 relative to the voting and issuance of revenue bonds by municipal corporations under the provisions of Subpart C, Part I, Chapter 10, Title 33 of the Louisiana Revised Statutes of 1950 and providing for the validation of bonds heretofore voted or issued thereunder and proceedings had in connection therewith.

Be it enacted by the Legislature of Louisiana:

Section 1. Section 4258 of Title 33 of the Louisiana Revised Statutes of 1950 is hereby amended and reenacted to read as follows:

§4258. Election to authorize the issuance of bonds; validation

Before the resolution authorizing the issuance of bonds under this Subpart is adopted by the governing body, the question of the issuance of the bonds shall be submitted and approved at either a special or general election which shall be ordered, conducted and canvassed in accordance with either of the following election procedures, at the discretion of the governing body:

(a). The question of the issuance of the bonds may be submitted to and approved by votes of a ma-

jority in number and amount of the property taxpayers who vote at an election held hereunder. In the event the governing body elects to order a property taxpayers' election, all matters pertaining thereto, including the qualifications of voters and the manner of calling and conducting the election and canvassing and promulgating the results thereof shall be governed by the provisions of Chapter 4, Subtitle 2, Title 39.

(b). The question of the issuance of the bonds may be submitted to and approved by a majority of the qualified electors of the municipal corporation who vote at an election held therein substantially in accordance with the general election laws of the State of Louisiana, except that the election shall be ordered, conducted, canvassed and notice thereof published by the governing body in accordance with the procedures set forth in Chapter 4, Subtitle 2, Title 39, except where inconsistent with the provisions of this section. In the event the governing body elects to order such an election, all qualified resident electors shall be entitled to vote in the election and voters shall not be required to sign a ballot. Voting machines shall be used in the holding of this type of election and assessed valuation shall not be voted in the election.

In the event a property taxpayers' election has heretofore been held and promulgated approving the issuance of bonds under this Subpart, as contemplated in subparagraph (a) above, the governing body may proceed with the issuance and sale of such bonds without complying with the provisions of this section and without any further election approval.

All bonds heretofore issued under the provisions of this Subpart are hereby validated, ratified and confirmed and declared to be valid and binding obligations of the municipal corporation in accordance with the terms of their issuance in spite of any one or more irregularities which may have occurred in the passage of this Subpart or question which might be raised as to the constitutionality of any procedural provision of this Subpart. All proceedings heretofore had in connection with the issuance of such bonds are hereby ratified, validated and confirmed.

Section 2. If any provision or item of this Act or the application thereof is held to be invalid, such invalidity shall not affect any other provisions, items or applications of this Act which can be given effect without the invalid provisions, items or applications, and to this end the provisions of this Act are hereby declared severable.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 705

JOSEPH Q. CIPRIANO,

Appellant,

versus

CITY OF HOUMA, G. LESLIE BROUSSARD, Mayor, CHRISTIAN L. OLIVER, CHARLES DAVIDSON, PETER BOURGEOIS, JR., SAMUEL LUSCO and WILBERT P. BONVILLAIN,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

BRIEF FOR THE SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT AS AMICUS CURIAE

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BRIEF FOR THE SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT AS AMICUS CURIAE

The Salt River Project Agricultural Improvement and Power District, a political subdivision of the State of Arizona, sponsored by and acting through its authorized law officer herein, submits this brief as amicus curiae under Rule 42(4) of the Rules of this Court.

QUESTIONS PRESENTED

1. Whether the rule of *Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966) should be expanded to apply both to

(A) a bond election which affects only a limited aspect of the overall governmental functions of a municipality; and

(B) the payment of a tax as a condition of voting where the tax involved has as its principal purpose the raising of revenue rather than—as in the case of the poll tax—the establishing of a voting condition.

2. Whether the factors set forth in the lower Court's opinion, which the Louisiana Legislature could have taken into account in formulating its bond election voting requirements, can be said to be so erroneous as to be irrational.

3. Assuming, *arguendo*, that the decision of the lower court is to be reversed, whether any such reversal should be applied to bond elections held prior to the date of this Court's decision.

INTEREST OF THE SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT

The SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT (sometimes referred to hereinafter as the "District") is a political subdivision of the State of Arizona and was organized in 1937 under Arizona's Agricultural Improvement District Act. Arizona Revised Statutes, Title 45, Chapter 4. As an Agricultural Improvement District, the District enjoys all of the rights, privileges and benefits, and enjoys the immunities and exemptions of a municipality and political subdivision of the State of Arizona. Arizona Constitution, Article 13, Section 7. It is a special purpose district, which operates an electric generation and distribution system principally within the exterior boundaries of the Salt River Reclamation Project. The District serves more than 150,000 electric customers and is the principal source of all water within the Salt River Valley, which includes the City of Phoenix and surrounding communities.

Under contract with the United States Department of the Interior, the District and the Salt River Valley Water Users' Association operate the Salt River Reclamation Project, one of the oldest and one of the largest of the reclamation projects authorized under the Reclamation Act of June 17, 1902, 32 Stat. 388, 43 U.S.C. § 371 *et seq.* All of the net proceeds from the District's generation, sale, and distribution of electricity are used for the ultimate purpose of financing the reclamation activities of the Salt River Project. Indeed the sole reason for the existence of the District and its electric operations is to support the overriding reclamation objectives. *Uhlmann v. Wren,* 97 Ariz. 366, 401 P. 2d 113 (1965).

As a special purpose district and political subdivision of the State of Arizona, the District has the authority to issue bonds, repayable out of its electric revenues. The District's bonds are unlike those involved in the instant case in two respects: (1) they are general obligation bonds and (2) they become a lien upon all of the real property included in the District. A.R.S. § 45-1047.

Arizona law provides that an agricultural improvement district may elect to "provide for voting on an acreage basis . . ." in which case "each landowner possessing the qualifications of an elector shall be entitled to cast one vote at all elections . . . for each acre of land within the district owned by him. . . ." A.R.S. § 45-983. This option to provide for voting on an acreage basis was selected by the District upon its organization in 1937.

The largest bond issue in the history of the Salt River Project was approved by the District's landowners on October 28, 1968, authorizing the issuance of bonds in the amount of $180 million to finance expansion of facilities to meet the District's projected electric energy requirements over a period of approximately eight years. The proceeds from these bonds will be used to fulfill commitments which the District made both before and since the bond election, and will finance the orderly expansion of the District's electrical facilities needed in order to keep pace with its obligation

to serve electricity and agricultural and municipal water to the rapidly expanding greater Phoenix area. Any substantial delay in the issuance of these bonds would have a serious and adverse impact upon the orderly development of the reclamation activities of the Salt River Project, and generally upon the entire economy of Central Arizona.

A dependable supply of water and electricity being indispensable to any kind of development—whether agricultural, residential, commercial, or industrial—the ability of the Salt River Project to market the bonds which were authorized at the election held on October 28, 1968 is of great importance to a major segment of the State of Arizona. Accordingly, the interest of the Salt River Project Agricultural Improvement and Power District in this matter is in urging the correctness of the lower Court's judgment, but even more important, in urging that any rule announced by the Court imposing constitutional requirements for voting in bond elections be prospective only, so as not to create havoc with the financing of an orderly expansion of needed facilities, planned in accordance with law which existed as of the time that the bond elections were held.

ARGUMENT

I.

A. Last term, in *Avery v. Midland County,* 390 U.S. 474 (1968), this Court reaffirmed a distinction drawn during the previous term by *Sailors v. Board of Education,* 387 U.S. 105 (1967), that the "one man-one vote" principle of *Reynolds v. Sims,* 377 U.S. 533 (1964) and the other reapportionment cases does not apply to municipal entities exercising only limited governmental powers.

We recognize that the instant case does not fit squarely within the apportionment prototype, since the problem is one of classification of voters rather than one of dilution or weighting of the vote. Nevertheless, the sound policy determination underlying the holdings in *Sailors* and *Avery* seems completely applicable to the instant case: the equal protection clause of the United States Constitution recognizes a distinction between exercise of the voting franchise upon matters of general governmental interest, and matters of particular governmental interest, such as schools or electric service. In *Sailors v. Board of Education,* 387 U.S. 105, 110 (1967), this Court found important the fact that "the County Board of Education performs essentially administrative functions; and while they are important, they are not legislative in the classical sense." Similarly, in *Avery v. Midland County,* 390 U.S. 474 (1968), this Court stressed that "Our decision today is only that the Constitution imposes one ground rule for the development of arrangements of local government: a requirement that units with general governmental powers over an entire geographic area not be apportioned among single-member districts of substantially unequal population." 390 U.S. at 485-486.

It is true that the City of Houma exercises general governmental powers, but the election here involved—as was also true of the school board election in *Sailors*—affected only a particular segment of those general governmental powers, the construction by the City of an electrical power system.

The effect of the poll tax in *Harper v. Virginia State Board of Elections,* 383 U.S. 663 (1966) was entirely to foreclose voting on all political matters, just as the effect of malapportionment in *Reynolds v. Sims* and *Avery v. Midland County* was to dilute the power of the vote across the entire spectrum of political matters with which the Alabama legislature, in *Reynolds v. Sims,* and the Midland County Commissioners Court, in *Avery v. Midland County,* dealt. In the instant case, on the other hand, as in *Sailors v. Board of Education,* the franchise affects only a limited segment of governmental activity. Indeed, the activity involved in this case is not even essential to the functioning of government *qua* government. It is respectfully submitted that the *Harper* holding should not be expanded to apply to elections of such limited scope. By analogy to the reapportionment cases, the principle of *Harper v. Virginia State Board of Elections* should be held inapplicable to the bond election involved here.

A further distinction between *Harper* and the instant case is that the principal, if not the sole, purpose of the poll tax was as a prerequisite to voting. As long as the individual did not attempt to vote, no effort was made to collect a poll tax from him. The dominant purpose of real property taxation, by contrast, is not as a voting condition but as a revenue measure.

B. Even if the holding in *Harper v. Board of Elections* were to be expanded to embrace (1) bond elections of limited scope, and (2) real property taxes as well as poll taxes, it is well settled doctrine that the demands of the Fourteenth Amendment's equal protection clause are satisfied by a legislative classification which is not arbitrary nor invidious.

At least since *Nebbia v. New York,* 291 U.S. 502 (1934) it has been clear that neither this Court nor any other Court will, in the name of constitutional interpretation, substitute its judgment for the judgment of the legislature on basic policy matters, nor re-weigh the policy considerations which the legislature took into account in making its judgment. This principle applies with just

as much force to the equal protection clause as to the due process clause.

The factors which the Louisiana Legislature might properly have taken into account in determining that the right to vote in bond elections should be restricted to real property taxpayers have been adequately set forth by the lower Court in its opinion. See *Cipriano v. City of Houma,* 286 F. Supp. 823, 827 (E.D. La. 1968). In the language of the lower Court:

> "In all of these matters, their conclusion might be different from the ones we ourselves would reach, and the conclusion might be one that cannot be scientifically established or proved by a preponderance of the evidence. But the question is not whether they are right, but merely whether they are so wrong as to be irrational." *Ibid.*

It is respectfully submitted that the considerations set forth in the lower Court's opinion amply support the lower Court's conclusion that the Louisiana Legislature cannot be said to have acted invidiously nor arbitrarily in limiting the franchise in bond elections to real property taxpayers.

II.

The issue of most far-reaching impact in this case is whether—assuming *arguendo* that the Court were to hold that this case is to be reversed on its merits—the resulting rule should apply to bond elections which were held prior to the date of the Court's decision.

This Court's opinion in *Linkletter v. Walker,* 381 U.S. 618 (1965) contains an exhaustive discussion of the basic policy issues underlying prospective versus retroactive application of judicial determinations, particularly determinations by this Court. *Linkletter v. Walker* candidly discusses the error of the earlier cases, such as *Norton v. Shelby County,* 118 U.S. 425 (1886) which held that unconstitutional action "confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed." 118 U.S. at 442.

It is now well settled that there is no constitutional requirement that constitutional decisions be given retroactive effect. In the language of Justice Cardozo, speaking for the Court in the leading case, *Great Northern Ry. Co. v. Sunburst Oil & Refining Co.*, 287 U.S. 358, 364 (1932), "the Federal Constitution has no voice upon the subject." And, as this Court stated in *Linkletter v. Walker*, "while the cases discussed above [*Chicot County Drainage District v. Baxter State Bank*, 308 U.S. 371 (1940); *United States v. Schooner Peggy*, 1 Cranch 103, 2 L.Ed. 49 (1801); and others] deal with the invalidity of statutes or the effect of a decision overturning long-established common-law rules there seems to be no impediment—constitutional or philosophical—to the use of the same rule in the constitutional area where the exigencies of the situation require such an application." 381 U.S. at 628.

What, then, are the "exigencies of the situation" insofar as bond elections are concerned? The amicus curiae brief submitted by the State of Louisiana and the Louisiana Municipal Association contains a review of the states whose municipal bonding schemes might be affected by a reversal of the lower Court's holding. Inability of municipalities in these states to sell their presently approved but unissued bonds according to planned schedule would result in chaotic disruption of the orderly development of necessary governmental projects.[1]

---

[1] The $180 million bond issue approved by the electors of the Salt River Project Agricultural Improvement and Power District on October 28, 1968, is illustrative. The District's total kilowatt hour sales during 1968 were 3.426 billion. These sales are projected to increase to 4.777 billion kilowatt hours in 1969, and 6.772 billion kilowatt hours by 1976. The lag time for construction of the additional power generating and transmission facilities and other support equipment required to supply these additional amounts of energy is on the order of several years. Turbine generators and other specialized equipment—some of which the District will need by the mid-1970's—must be ordered several years in advance. Since the bond election of October 28, 1968, the District has obligated itself to purchase portions of this needed equipment. It is for these reasons that the $180 million bond issue—virtually all of which has been ear-marked to supply these greatly expanded electric load requirements of the District—must be sold according to schedule. Failure to do so would not only spell disaster for the Salt River Project, but also for a large segment of agricultural, industrial, and commercial—and conceivably even residential—consumers of electricity within the greater Phoenix area.

Even though the instant case is different in some respects from the reapportionment cases, the relevant policy considerations insofar as the need for prospective remedy is concerned, are identical. Upon holding, in *Reynolds v. Sims,* 377 U.S. 533 (1964), that the apportionment of seats in the Alabama legislature violated the constitutional guarantee of equal protection, this Court could have proceeded to dissolve the State legislature, and invalidate the laws which it had enacted. The remedy selected was a far more practical one, one which effected an appropriate accommodation between the demands of equal protection of the laws, and the needs of state government to maintain its orderly and continuing governmental processes. In *Reynolds,* and indeed in all of the reapportionment cases of which we are aware, this Court has not only given prospective application to its reapportionment holdings, but has gone a step further, and allowed a reasonable time within which the State legislatures involved could prepare apportionment schemes which conformed to constitutional requirements. In *Roman v. Sincock,* 377 U.S. 695 (1964), for example, this Court commended the District Court for delaying its decision until after the 1962 election. In the language of the Court:

> "In giving the Delaware Legislature an opportunity to adopt a constitutionally valid plan of legislative apportionment, and in deferring decision until after the November 1962 general election, because of the imminence of that election and the disruptive effect which its decision might have had, the District Court acted in a wise and temperate manner." 377 U.S. at 709-710.

As recently as March 3, 1969, this Court refused to give retroactive effect to its decision in a voting case in *Allen v. State Board of Elections,* 89 S.Ct. 817 (1969). After holding that Section 5 of the Voting Rights Act of 1965, 79 Stat. 437, 42 U.S.C. § 1973 *et seq.,* required that certain changes in state election laws and regulations involved in *Allen* and other companion cases either be submitted to the United States Attorney General for approval, or a declaratory judgment action be brought in the Federal Dis-

trict Court for the District of Columbia, the Court observed as follows:

> "Appellants in the Mississippi cases have asked this Court to set aside the elections conducted pursuant to these enactments and order that new elections be held under the preamendment laws. The Solicitor General has also urged us to order new elections, if the State does not promptly institute § 5 approval proceedings. We decline to take corrective action of such consequence, however. These § 5 coverage questions involve complex issues of first impression—issues subject to rational disagreement. The state enactments were not so clearly subject to § 5 that the appellee's failure to submit them for approval constituted deliberate defiance of the Act. Moreover, the discriminatory purpose or effect of these statutes, if any, has not been determined by any court. We give only prospective effect to our decision, bearing in mind that our judgment today does not end the matter so far as these states are concerned." 89 S.Ct. at 835.

See also *Desist v. United States,* No. 12, October Term 1968 and *Kaiser v. New York,* No. 62, October Term 1968, both decided March 24, 1969.

The potential for disruption of orderly state processes resulting from a retroactive reversal in the instant case is far greater than in the *Allen* case. See *State v. Martin,* 62 Wash. 2d 645, 384 P.2d 833 (1963). It is further significant that here, unlike the situation in *Allen,* both parties and both of the amici agree that a reversal, if any, should be given only prospective effect.

In our view, the dispositive fact is that in no instance has an act of a malapportioned legislature ever been invalidated. If this Court were now to call into question bonding schemes which have been utilized by many states and their political subdivisions for more than a hundred years, the same considerations for preventing the disruption of orderly state financing processes should be applied here as in the reapportionment cases. Preferably—again by analogy to the reapportionment cases—the State should be given a reasonable time to enact new statutes to conform to the Court's rule. At the very least, it should be clarified that bonds which

were authorized at elections held prior to the date of the Court's decision may be issued as planned.

It would not be sufficient in a case of this kind to await a future lawsuit to determine whether a reversal, if any, should be retroactive or prospective. A reversal in this case without an express limitation of the holding to future cases would immediately cast a cloud upon the billions of dollars of presently authorized but unissued bonds of state and local governments. Even assuming that many of the entities issuing these bonds would eventually be able to establish that the authorizing election fell within the permissible boundaries marked out by the Court's opinion, this would not forestall the intervening calamitous consequences; in most instances, the mere filing of a lawsuit challenging the election on constitutional grounds has the effect of rendering the bonds unsaleable.

The interdiction of all authorized but unissued bonds of political subdivisions whose electors must be real property taxpayers would be an inordinately severe remedy. Moreover, such a remedy would be not only unnecessary, but indeed inimical, to the orderly establishment of new state municipal bond election voting schemes which conform to whatever constitutional requirements may be set forth in the Court's opinion.

CONCLUSION

In *Roman v. Sincock,* this Court praised the district court for having delayed its decision until after the 1962 election, "because of the imminence of that election and the disruptive effect which its decision might have had. . . ." 377 U.S. at 709-710. Following the decision of this Court, in *Roman v. Sincock,* which was handed down on June 15, 1964, the case was remanded to the District Court with the following instructions:

> "Acting under general equitable principles, the court below must now determine whether it would be advisable, so as to avoid a possible disruption of state election processes and permit additional time for the Delaware Legislature to adopt a constitutionally valid apportionment scheme, to allow the 1964 election of Delaware legislators to be conducted pursuant to the provisions of the 1963 constitutional amendment, or whether those factors are insufficient to justify any further delay in the effectuation of appellees' constitutional rights." *Id.* at 711-712.

For reasons set forth in Section I of the Argument portion of this brief, we urge that the judgment of the district court be affirmed. Of far greater importance than affirmance or reversal, however, is the compelling need to follow the same remedial procedures that were brought into play in the reapportionment cases. Preferably, this would mean that in the event of reversal, state legislatures should be given a reasonable time within which to reform their municipal bond election voting schemes to conform to the Court's guidelines. At the very least, in the event of a reversal, the Court should clarify that its holding does not apply to bond elections which were held prior to the date of the Court's decision.

Respectfully submitted,

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SUPREME COURT U. S.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1968

No. 705

JOSEPH Q. CIPRIANO,

Appellant,

versus

CITY OF HOUMA, G. LESLIE BROUSSARD, Mayor, CHRISTIAN L. OLIVIER, CHARLES DAVIDSON, PETER BOURGEOIS, JR., SAMUEL LUSCO and WILBERT P. BONVILLAIN,

Appellees.

On Appeal from the United States District Court for the Eastern District of Louisiana

MOTION FOR LEAVE TO FILE BRIEF AND BRIEF OF AMICUS CURIAE AND OF INTERVENOR

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May It Please the Court:

The State of Louisiana and the Louisiana Municipal Association file this joint brief with motion for leave for the latter to file brief amicus curiae pursuant to Rules 10, 40, 41 and 42, the said State of Louisiana and Louisiana Municipal Association having been, respectively, intervenor and *amicus curiae* in the court below.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1968

No. 705

JOSEPH Q. CIPRIANO,

Appellant,

versus

CITY OF HOUMA, G. LESLIE BROUSSARD, Mayor, CHRISTIAN L. OLIVIER, CHARLES DAVIDSON, PETER BOURGEOIS, JR., SAMUEL LUSCO and WILBERT P. BONVILLAIN,

Appellees.

On Appeal from the United States District Court for the Eastern District of Louisiana

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

May It Please the Court:

This motion is filed on behalf of the State of Louisiana and on behalf of the Louisiana Municipal Association, which is composed of the incorporated cities, towns and villages of the State of Louisiana. The issues raised in this litigation have application to most, if not all, of the incorporated municipalities in the State of Louisiana, and to all other politi-

cal subdivisions of the State of Louisiana which are required under the provisions of the Louisiana Constitution to secure the approval of the qualified taxpaying electors thereof prior to issuing and selling securities commonly known as "municipal bonds." The issues raised in this litigation also have application to those private investors and financial concerns located in the State of Louisiana, and elsewhere which deal in, own and sell municipal bonds.

Petitioner believes that the decision of the trial court should be affirmed but, if it is not, sets forth as follows its reasons for believing that certain questions of law will not be adequately presented by the parties and their relevancy to the disposition of the case. Appellant and the City of Houma are concerned with one particular bond issue voted at one particular election and the broader question of whether and how a judicial precedent might operate to affect other political sub-divisions is of no particular concern to either. The City of Houma, in the face of an adverse decision, regardless of how prospective or retroactive might be the effect of the precedent established by the decision of this court, would be required to hold another election to issue the bonds involved if the court grants the relief sought by the Appellant. Likewise, the Appellant has no particular interest in the retroactive or prospective nature of such precedent, as Appellant's interest is in preventing the issuance of the particular bonds involved. For this reason the petitioner feels that neither the Appellant nor the City of Houma is in a position to point out to the court the arguments and considerations involved in the prospective or retroactive nature of the judicial precedent established by a decision such as that sought by the Appellant.

These arguments and considerations are relative to the

disposition of this case because of the great public importance of the issues here involved. Statutory or constitutional provisions in fourteen states restrict the right to vote in some or all bond elections to taxpayers or property owners. A decision casting doubt on the constitutionality of elections authorizing the outstanding bonds of political sub-divisions in said states could result in great public hardship even if the courts of last resort, or the legislatures, or the people of said states by constitutional amendments, should eventually take whatever steps might be required from state to state to render such bonds legally binding despite the nature of the elections at which they were authorized. If such courts, legislatures or people by constitutional amendment should fail to take such steps, the innocent holders of the bonds so voted could find their investments wiped out. Even if no doubt were cast upon the validity of outstanding bonds, a decision which cast doubt on the right of political subdivisions of those states to issue bonds voted at elections, heretofore held, at which only qualified electors who were taxpayers or property owners at the time of the election were permitted to vote, would prevent the issuance of such bonds altogether pending action of the state legislatures or amendments to the state constitutions because purchasers of bonds (who are responsible for ascertaining that their bonds are legally issued*), require assurance that the legality of such investments will not be successfully challenged.

For the reasons stated above petitioner respectfully moves that the Court grant leave to file a brief amicus curiae, which

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* 15 McQuillin, Municipal Corporations, 3rd Edition, p. 484 et seq., Section 43.13 and cases therein cited.

brief is a joint brief of both the petitioner and of the State of Louisiana, Intervenor in the court below.

Respectfully submitted,

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CERTIFICATE

I, the undersigned counsel for petitioner, Louisiana Municipal Association, do hereby certify that a copy of the foregoing motion has been served on all counsel in this matter by depositing a copy thereof in the United States Mail, postage prepaid, addressed to each of them at his respective address of record.

Baton Rouge, Louisiana, this____day of_____, 1969.

_____

John V. Parker

IN THE

SUPREME COURT OF THE UNITED STATES

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JOSEPH Q. CIPRIANO,

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versus

CITY OF HOUMA, G. LESLIE BROUSSARD, Mayor, CHRISTIAN L. OLIVIER, CHARLES DAVIDSON, PETER BOURGEOIS, JR., SAMUEL LUSCO and WILBERT P. BONVILLAIN,

Appellees.

On Appeal from the United States District Court for the Eastern District of Louisiana

BRIEF FOR THE STATE OF LOUISIANA AS INTERVENOR AND THE LOUISIANA MUNICIPAL ASSOCIATION AS AMICUS CURIAE

STATEMENT

The State of Louisiana, as intervenor, and the Louisiana Municipal Association, as amicus curiae, adopt the statement of this case appearing in the brief of the City of Houma, Louisiana, the Appellee.

INTEREST OF AMICUS CURIAE

The interest of the Louisiana Municipal Association in

this cause is shown in the Motion for Leave to File Brief Amicus Curiae filed herewith.

SUMMARY OF ARGUMENT

Because of the great public importance of the right of Municipalities in Louisiana and thirteen other states to finance public improvements in a manner which can be relied on to establish the validity of bonds issued to pay therefor, it is argued that the decision below should be affirmed; if it is not affirmed, a reversal should be prospective only in its effect, should show that the rule requiring such reversal applies only to elections called after the date of the decision of this Court, and should show whether said rule applies to revenue bonds alone or to all bonds of political sub-divisions.

ARGUMENT

The State of Louisiana and the Louisiana Municipal Association are concerned that a decision granting the relief sought by the Appellant and declaring that all provisions of the Constitution and Laws of Louisiana which restrict voters in revenue bond elections to taxpayers are void in violation of the Fourteenth Amendment to the Constitution of the United States, would result in the establishment of a judicial precedent applicable to other Louisiana bond election laws and to the laws of all states under which similar bond elections are held. Such a judicial precedent, if retroactive in its application, would cast doubt on the legality of outstanding bonds voted at such elections and, if it should be determined that said outstanding bonds are illegal, all cities in said states would suffer by virtue of inability lawfully to pay the same and thus retain their credit standing and to issue bonds or otherwise borrow money on favorable terms in the future. If

such relief were granted to the Appellant pursuant to a decision which establishes a precedent prospective only in nature, further clarification would be required for the issuance of bonds other than revenue bonds and for the issuance of any bonds voted at elections called or held prior to the date of such decision of this Court. As cities often choose not to issue all bonds of a voted issue at one time, but to defer the issuance of a portion of them until proceeds are needed, a decision which would prevent the issuance of bonds so voted but not yet issued might result in many cities' being unable to issue the bonds necessary to obtain the money required to complete the projects for which some bonds voted at said elections have already been issued.

It is the contention of the State of Louisiana as Intervenor and the Louisiana Municipal Association as Amicus Curiae, first of all, that the decision of the Three Judge Federal Court in the case below should be affirmed. Arguments in favor of this proposition, in which said Intervenor and Amicus Curiae concur, appear in the brief of the Appellee and need not be reiterated here. Intervenor and Amicus Curiae further state that a reversal of the decision of the trial court would, very possibly, result in substantial disruption of the orderly process of financing public improvements by political subdivisions in the fourteen states mentioned below.

Without in any way diminishing the strength of their contention that the decision of the trial court should be affirmed, Intervenor and Amicus Curiae feel that their interest in the outcome of this case can best be served by pointing out ways by which this court could, if it feels it must reverse the trial court, reduce to a minimum the public confusion resulting from such decision.

Constitutional and Statutory Provisions of States Having Property Ownership or Taxpayer Requirements for Bond Elections

The following summary will show the variety of the requirements which exist in the United States for taxpayer or property ownership qualifications to vote in bond elections. Variety exists with respect to (a) the section of the country in which the state lies, (b) the nature of the issuer and (c) the source of payment of the bonds; there is no single formula common to all states which have such requirements.

Alaska Constitution, Article V, Section 1, dealing with qualifications of voters: "Additional voting qualifications may be prescribed by law for" bond issue elections of political subdivisions. Section 29.50.020 of the Alaska Statutes states that municipal corporations may not incur bonded indebtedness without submitting a proposal to incur the same to the qualified voters and further provides that the "governing body of the municipality may prescribe additional voting qualifications for bond issue elections." Alaska Statutes, Section 42.35.300 prohibits a public utility district from incurring indebtedness unless the proposal is submitted at an election. "Only the qualified voters of the district whose names appear on the last assessment roll or tax record are eligible to vote at the election." Section 07.30.010 contains similar requirements as to bond elections in boroughs which, in Alaska, perform local governmental functions outside of incorporated cities.

Arizona Constitution, Article 7, Section 13: "Questions upon bond issues or special assessments shall be submitted to the vote of real property taxpayers who shall also in all re-

spects be qualified electors of this State and of the political sub-divisions thereof affected by such question." Article 9, Section 8 of said Constitution provides that no county, city, town, school district, or other municipal corporation may become indebted in excess of 4% of the taxable property therein "without the assent of a majority of the property taxpayers, who must in all respects be qualified electors, voting at an election provided by law to be held for that purpose . . . ." Such qualifications are required regardless of whether the election is on bonds payable from ad valorem property taxes or bonds payable from other sources. *Ackerman v. Boyd*, 74 Ariz. 77, 244 P.2d 351.

Colorado Constitution, Article XI, Sections 6, 7 and 8, provide that no county, school district or city or town may contract "any debt by loan in any form" unless the proposition to incur or create it has been submitted "to such qualified electors of such county as in the year last preceding said election have paid a tax upon property assessed to them in such county and a majority of those voting thereon shall vote in favor of incurring the debt . . . ." The same requirement appears for school districts except the electors must have paid a school tax in the district and, with respect to cities, they must have paid a property tax in the city. All bonds payable from ad valorem property taxes are held to constitute "debt by loan" but most revenue bonds are not "debt" and are not voted. *City of Trinidad v. Haxby*, 136 Colo. 168, 315 P.2d 204, *Pearl-Mack Civic Ass'n v. Board of Directors*, 140 Colo. 371, 344 P.2d 685, *Ginsberg v. City and County of Denver*, ___ Colo. ___, 436 P.2d 685.

Florida Constitution of 1885, Article IX, Section 6, provides that counties, districts or municipalities "shall have

power to issue bonds only after the same shall have been approved by a majority of the votes cast in an election in which a majority of the freeholders who are qualified electors residing in said counties, districts or municipalities shall participate . . . ." At the election of November 5, 1968, the voters of the State of Florida adopted a revised constitution taking effect January 7, 1969. The corresponding provision of the new constitution provides that counties, school districts, municipalities, special districts and local governmental bodies with taxing powers may issue bonds or other obligations payable from ad valorem taxation and maturing more than twelve months after issuance "only when approved by a vote of the electors who are owners of freeholds therein not wholly exempt from taxation." Under the 1885 Constitution the word "bonds" was held to include revenue bonds secured by a mortgage on the public utilities of which the revenues were pledged to pay the obligations (*Broward County Port Authority v. State*, 129 Fla. 73, 175 So. 796; *Boykin v. Town of River Junction*, 121 Fla. 902, 164 So. 588), or secured by pledge of gross revenues when operation and maintenance of the facilities involved must be paid for from ad valorem taxation (*Kathleen Citrus Land Co. v. City of Lakeland*, 124 Fla. 659, 169 So. 356), but did not include other obligations payable solely from funds derived from sources other than ad valorem property taxes, including utility revenues, cigarette taxes, utilities taxes and franchise fees. *Town of Medley v. State of Florida*, 162 So. 2d 257.

Idaho Constitution, Article VIII, Section 3, prohibits political sub-divisions from incurring "any indebtedness or liability in any manner or for any purpose, exceeding in that year the income and revenue provided for it for such year, without the assent of two-thirds of the qualified electors thereof voting at an election to be held for that purpose . . ." and

provided further that revenue bonds for water, sewer and off-street parking purposes might be issued "with the assent of two-thirds of the qualified electors voting at an election to be held for that purpose . . . ." Article VI, Section 4, of the Idaho Constitution provides that the legislature may prescribe additional qualifications for the right of suffrage beyond those prescribed by the remainder of Article VI. The various provisions of the Idaho Code relating to bonds of cities, counties and school districts (50-1026, 31-1905, and 33-404, respectively) provide that only real property taxpayers (and, in counties and school districts, their wives and husbands) may vote in elections on bonds payable from ad valorem property taxes and Section 50-1035 of the Idaho Code provides that all qualified electors may vote in city revenue bond elections. In school district bond elections, contract purchasers of real estate may qualify.

Louisiana Constitution, Article XIV, Section 14(a) provides that political subdivisions may "incur debt and issue negotiable bonds when authorized by vote of a majority, in number and amount, of the property taxpayers qualified to vote under the Constitution and laws of this state who vote at an election held for that purpose . . . ." Article XIV, Section 14(m), provides for the issuance of revenue bonds secured by a pledge of the income and revenues of the utility involved and provides that "the legislature may in its discretion, require an election by the taxpaying voters of the subdivision or district as a condition precedent to the issuance of such bonds . . . ." The legislature has enacted two revenue bond laws in Louisiana, one of which (33:4221 et seq.) requires a mortgage on the public utility and an election at which all qualified electors vote, and the other of which (R.S. 33:4251 et seq.) does not contemplate a mortgage and, when this suit was in-

stituted, provided that the bonds be voted in the same way as general obligation bonds. This latter law is the law under which the bonds of the City of Houma which are the subject to this litigation were voted and was amended by Act 33 of the 1968 special session of the Legislature to provide that the governing body may decide whether to hold a taxpayer's election or an election at which all qualified electors may vote.

Michigan Constitution, Article II, Section 6, provides that whenever a question is required to be submitted to the electors of a political subdivision for the issue of bonds "only electors in, and who have property assessed for any ad valoren. taxes in, any part of the district or territory to be affected by the result of such election or electors who are the lawful husbands or wives of such persons shall be entitled to vote thereon." Revenue bonds are not considered as falling within said requirement, and are issued subject to referendum upon the filing of a sufficient petition under Section 33 of the Revenue Bond Act of 1933 (C.L. '48, Section 141.133, M.S.A. Section 5.2763). At such referendum all qualified electors may vote.

Montana Constitution, Article IX, Section 2, setting forth the qualifications of voters generally provides: "If the question submitted concerns the creation of any levy, debt or liability the person, in addition to possessing the qualifications above mentioned, must also be a taxpayer whose name appears upon the last preceding completed assessment roll, in order to entitle him to vote upon such question." Article XIII, Section 5, requires bond elections for county bonds and Sections 11-2306, 11-2310, 11-2404 and 75-3908 of the Revised Codes of Montana require such elections on all city and school district bonds, including city revenue bonds.

New Mexico Constitution, Article 9, Section 12, provides for the contracting of debt of cities, towns or villages and provides that no such debt shall be created unless the question of incurring the same shall "have been submitted to a vote of such qualified electors thereof as have paid a property tax therein during the preceding year and a majority of those voting on the question . . . shall have voted in favor of creating such debt." A recent amendment to said section provides that qualified voters of the county in which a city, town or village is located and in which they own taxable property are to be deemed qualified to vote at a bond election therein even though they do not reside in the city, town or village. Only qualified resident taxpayers vote in elections on the borrowing of money by counties under Article 9, Section 10, and by school districts under Article 9 of Section 11 of the Constitution. Revenue bonds and bonds secured by certain excise taxes may be issued without an election if approved by ¾ of the governing body; if approved by a majority less than ¾ of the governing body, such bonds are voted by all qualified electors under Section 14-30-4 of the New Mexico Statutes, 1953.

New York Local Finance Law, Section 33.10, provides that most bonds are issued without an election; however, sometimes the taxes to pay such bonds must be voted under Section 233 of the County Law and at any such bond or tax election all qualified voters participate under Article 3 of the County Law. Section 34.00 of the Local Finance Law provides that a city may adopt a local law requiring that resolutions authorizing bonds be subject to a mandatory or permissive referendum and further provides that such a local law shall prescribe the qualifications of voters at such referendum. The Town Law, Section 84, provides that "No person shall be en-

titled to vote upon any proposition for raising, appropriating or expending money or incurring any town liability, or for the sale or other disposition of town land or property, unless he or she is an elector of the town and the owner of property assessed upon the last preceding town assessment roll"; under Section 35.00 of the Local Finance Law many town bond issues are subject to mandatory or permissive referendum. New York Village Law, Section 4-402, requires that for a voter to vote upon a proposition he or she "must be entitled to vote for an officer and he or she must also be an owner of property in the village assessed upon the last preceding assessment roll thereof." This requirement applies to all acts of the Board of Trustees of a village which are subject to referendum under Section 139-a of the Village Law and such a referendum is permitted or required for bond issues by Section 36.00 of the Local Finance Law. Section 4-402 of the Village Law has been held unconstitutional as in violation of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States by a three judge federal court dictrict for the Southern District of New York in the case of *Butler v. Village of Ossining,* 37 L.W. 2257, involving a referendum on the proposition to adopt a village manager form of government. Local Finance Law, Section 37.00, provides that most bond and capital note resolutions cannot be adopted unless a tax has been voted under the Education Law. Section 2012 of the Education Law provides that a qualified elector must have certain qualifications, one of which may be status as a taxpayer; the constitutionality of this law is involved in the case of *Kramer v. Union Free School District*, Number 258 on the current docket of the Supreme Court of the United States which was argued January 16, 1969, in a situation involving the right to vote in school district elections generally and not just those

elections involving bonds or taxes. Revenue bonds are issued by counties, cities, towns and villages under Article 14C of the General Municipal Law, which does not require an election.

Oklahoma Constitution, Article X, Section 27, provides that an incorporated city or town "may, by a majority of the qualified property taxpaying voters of such city or town, voting at an election to be held for that purpose, be allowed to become indebted in a larger amount than that specified in Section 26, for the purpose of purchasing or constructing public utilities, or for repairing the same, to be owned exclusively by such city . . . ." Section 26 of that article contains a debt limit and an election requirement providing for the "assent of three-fifths of the voters thereof, voting at an election to be held for that purpose . . ." without regard to the taxpayer status of the voters. In practice, and under the Oklahoma Supreme Court decisions, all city and town bonds except road, street and highway bonds are voted under Section 27, the word "public utility" having been held to mean any public purpose but roads, streets and highways not falling within the category of "owned exclusively by said city." *City of Shawnee v. Williamson,* 338 P.2d 355. Article X, Section 27A of the Oklahoma Constitution provides that any city or town may, "after approval of the proposition by a majority of the qualified electors voting in an election . . ." contract and pledge revenues with other cities and towns, the state or the United States or any other governmental subdivision or agency of any of them for water purposes. Except for the limited purposes of Article X, Section 27A, revenue bonds cannot be issued by Oklahoma political subdivisions because of the requirement of Article X, Sections 26 and 27, that taxes sufficient to pay the bonds be imposed. *Application of City Council of City of Tahlequah*, 285 P. 2d 418.

Rhode Island Constitution. Amend. Article XXIX, Section 2, provides that, except as provided in Section 3, no person may vote on a proposition to impose a tax or for the expenditure of money "in any town as distinguished from a city, unless he shall be qualified under the provisions of Section 1 hereof and shall either (1) be really and truly possessed in his own right of real estate in such town of the value of $134 over and above all incumbrances, or which shall rent for $7 per annum over and above any rent reserved or the interest of any incumbrances thereon, being an estate in fee-simple, fee-tail, for the life of any person, or an estate in reversion or remainder, which qualifies no other person to vote, the conveyance of which estate, if by deed, shall have been recorded at least ninety days prior to the time of voting, or (2) shall within the year next preceding have paid a tax assessed upon his personal property in said town of the value of at least One Hundred Thirty Four Dollars." Such voting is required at town financial meetings and regional school district financial meetings when bonds are authorized under the foregoing provision and under Section 16-3-11 of the general laws of Rhode Island.

Texas Constitution, Article 6, Section 3-a, provides that when an election is held in a political sub-division "for the purpose of issuing bonds or otherwise lending credit, or expending money or assuming any debt, only qualified electors who own taxable property in the state, county, political sub-division, district, city, town or village where such election is held, and who have duly rendered the same for taxation, shall be qualified to vote . . . ." The Constitution does not require revenue bonds to be voted at an election, but when such an election is required by statute, only voters meeting the qualifications of Article 6, Section 3-a, may vote. *City of*

Richmond v. Allred, 123 T. 365, 71 S.W. 2d 233. General obligation bonds of counties, cities and towns must be voted at elections under Article 701 of Vernon's Civil Statutes; bonds of school districts must be voted under Article 2784a et seq. Some city and town revenue bonds for new construction must be voted under Article 1112, but revenue bonds for extensions and improvements on a parity with outstanding revenue bonds may be issued without an election unless a petition is filed under Articles 1118t and 2368a.

Utah Constitution, Article XIV, Section 3, provides that no county or subdivision thereof nor any school district or city, town or village may incur debt in excess of taxes for the current year "unless the proposition to create such debt shall have been submitted to a vote of such qualified electors as shall have paid a property tax therein, in the year preceding such election, and a majority of those voting thereon shall have voted in favor of incurring such debt." Under the decisions of the Supreme Court of Utah "debt" is incurred in the issuance of revenue bonds issued so as to be payable from revenues derived from sources other than or in addition to the facility for the acquisition of which the bonds are issued; thus revenue bonds to improve and extend an existing utility, payable from the revenues of the entire utility rather than the proportion allocable to the improvements and extensions acquired with bond proceeds, constitute "debt" and require an election the same as bonds payable from ad valorem property taxes. *Utah Power & Light Co. v. Ogden City*, 95 Utah 161, 79 P.2d 61.

The States of Nevada and Wyoming have constitutional provisions which preclude the legislature from restricting to taxpayers or property owners the right to vote in bond elec-

tions. Nevada Constitution, Article II, Section 1, Wyoming Constitution, Article XVI, Section 4. In these states the law provides that all qualified electors who meet a taxpayer or property ownership requirement vote on colored ballots and all other qualified electors vote on white ballots. In order to carry the election, the proposition must receive a majority of the votes cast on each set of ballots. Nevada Revised Statutes, Section 350.050, 350.070; Wyoming Statutes, Sections 22-130 et seq. The Wyoming Supreme Court after having previously held void a legislative attempt to restrict voters in bond elections to taxpayers only, in the cases of *Simpkin v. City of Rock Springs*, 33 Wyo. 166, 237 P. 245, and *West et al v. School District No. 9*, 37 Wyo. 36, 258 P. 583, upheld the two-colored ballot arrangement in the case of *State ex rel. Voiles v. Johnson County High School*, 43 Wyo. 494, 5 P.2d 255.

The Nevada and Wyoming situations illustrate that the right to vote in a bond election is the right of participating in a decision to exercise or to withhold the exercise of a veto power. This veto power, in Wyoming, when extended to non-taxpaying voters on a "separate but equal" basis was held by the Wyoming Supreme Court to satisfy the requirement of the Wyoming Constitution that such propositions be submitted to a "vote of the people."

In addition to the foregoing the South Carolina Constitution, Article II, Section 13, requires a petition signed by a specific percentage of the taxpayers or freeholders before a bond election is called. South Dakota Code, Chapter 45.2301, authorizes the dispensing with certain bond elections if 60% of all freehold voters of the town involved shall petition the Board of Trustees; and Chapter 45.24A02 provides that no

revenue bonds shall be issued unless a majority of the resident freehold voters petition the governing body or an election is held on the issuance of the bonds at which all voters vote.

The questions involved in local service districts, such as those organized for water, sewage, drainage, irrigation, fire protection, hospitals and other specific purposes are not discussed at length herein, except to point out to the court that a decision which raises a question about bonds of municipalities could also raise a question of bonds of some of these local service districts where, in some instances, the right to vote in bond elections is also restricted to taxpayers and property owners. In the State of Louisiana, gravity drainage districts under R.S. 38:1776 and 38:1783 require the voting of acreage taxes and forced contributions in accordance with the number of acres of land which each voter owns in the area involved.

Similar arrangements pertain in irrigation districts and agricultural improvement districts in Arizona under Arizona Revised Statutes, Sections 45-983 and 45-1641 et seq.; in Montana Irrigation Districts under Revised Code of Montana, Section 89-1311; in Nevada Irrigation Districts (election must carry in number of votes and acreage) under Nevada Revised Statutes, Section 539.553; and in New Mexico Irrigation Districts under New Mexico Statutes 1953, Section 75-22-15.

The following table, therefore, summarizes the states in which only taxpayers or property owners are permitted to vote in county, municipal, or school district bond elections. It does not include other local service districts, such as those created for water, drainage, irrigation, sewer or fire protection purposes.

Municipalities, Counties and School Districts Limiting Bond Election Voters to Taxpayers or Property Owners

State	Authority	Issuer	Type
Alaska	Alaska Statutes §07.30.010	Boroughs (including all school and other districts outside of cities)	All
Arizona	Constitution, Article 7, §13	All	All
Colorado	Constitution, Article XI, §§6, 7 and 8	All	General Obligation
Florida	Constitution 1885, Article 9, §6, Constitution 1969, Article 7, §12	All	General Obligation
Idaho	Constitution, Article 8, §3, I.C. §§50-1026, 31-1905, 33-404	All	General Obligation
Louisiana	Article XIV, §14(a) R.S. 33:4251 et seq.	All	General Obligation Revenue (without mortgage)
Michigan	Constitution, Article II, §6	All	General Obligation

State	Authority	Issuer	Type
Montana	Constitution, Article IX, §2, Article XIII, §5, R.C.M. §§11:2306, 11:2404, 75:3908	All	All
New Mexico	Constitution, Article IX, §§10, 11 and 12	All	General Obligation
New York	Town Law, §84, Village Law §4-402	Towns Villages	General Obligation
Oklahoma	Constitution, Article X, §27	Cities Towns	All but streets, highways and limited access facilities
Rhode Island	Constitution, Article XXIX, §2; Rhode Island Statutes, §16-3-11	Towns Regional School Districts	All
Texas	Constitution, Article 6, §3a	All	General Obligation
Utah	Constitution, Article XIV, §3	All	General Obligation Revenue Bonds (except for new construction or payable from special allocation)

Authority and Reasons for Prospective Application of Decision If It Reverses Trial Court

As the foregoing material illustrates, a decision reversing the trial court in the present case of *Cipriano v. City of Houma* would throw confusion into the public finance of over a dozen states. In order to minimize this confusion, if such a decision must be reached by this court, it is respectfully suggested that such decision show clearly what types of bonds the decision applies to and that only elections called and held after the date of such decision will be affected thereby.

Both the power of the court to render a decision which has prospective effect only and the reasons for the exercise of that power in this cause are shown by the following cases:

Allen v. State Board of Elections et al, 37 L.W. 4168, decided by this court on March 3, 1969, docket numbers [redacted], 26 and 36—October term, 1968, held that the elections of boards of supervisors of two Mississippi counties were held in violation of Section 5 of the Voting Rights Act of 1965 because a change in the law respecting the area from which each supervisor was to be elected was not submitted to the Attorney General of the United States or to a declaratory judgment of the federal district court of the District of Columbia. Nevertheless, the majority opinion declared:

> Appellants in the Mississippi cases have asked this Court to set aside the elections conducted pursuant to these enactments and order that new elections be held under the preamendment laws. The Solicitor General has also urged us to order new elections, if the State does not promptly institute §5 approval proceedings. We decline to take corrective action of such consequence, however.

> These §5 coverage questions involve complex issues of first impression—issues subject to rational disagreement. The state enactments were not so clearly subject to §5 that the appellee's failure to submit them for approval constituted deliberate defiance of the Act. Moreover, the discriminatory purpose or effect of these statutes, if any, has not been determined by any court. We give only prospective effect to our decision, bearing in mind that our judgment today does not end the matter so far as these States are concerned.

Reynolds v. Sims, 377 U.S. 533, 12 L.ed 2d 506, 84 S.Ct. 1362, held void, under the Fourteenth Amendment to the United States Constitution, the previously existing system of apportioning the membership of the Alabama Legislature. In looking at the problem of bringing state legislatures into compliance, the court declared as follows:

> In awarding or withholding immediate relief, a court is entitled to and should consider the proximity of a forthcoming election and the mechanics and complexities of state election laws, and should act and rely upon general equitable principles. With respect to the timing of relief, a court can reasonably endeavor to avoid a disruption of the election process which might result from requiring precipitate changes that could make unreasonable or embarrassing demands on a State in adjusting to the requirements of the court's decree.

The foregoing cases illustrate the willingness of this court to apply the requirements of overriding federal law to governmental and political practices of long standing prospectively so as to reduce to a minimum the disturbance which the change in governmental purposes would require. Additional cases on prospective overruling are discussed below.

Desist v. United States, 37 Law Week 4225, decided by this Court on March 24, 1969, docket number 12—October Term, 1968, upheld the conviction of a defendant in Federal District Court for conspiracy to import and conceal heroin although an important part of the government's evidence consisted of tape recordings of conversations among several of the petitioners in a New York City hotel room under circumstances which were declared violations of the Fourth Amendment to the United States Constitution in *Katz v. United States*, 389 U.S. 347. The electronic eavesdropping occurred prior to December 18, 1967, when the *Katz* decision was announced. The United States Supreme Court held that the *Katz* case would be regarded as prospective only in its application to eavesdropping which would have been constitutionally permissible under prior decisions of the Courts, and that the *Katz* case rule would be applied only to eavesdropping occurring after that date, quoting from *Stovall v. Denno*, 388 U.S. 293, 297:

> "[T]he criteria guiding resolution of the question implicate (a) the purpose to be served by the new standards, (b) the extent of the reliance by law enforcement authorities on the old standards, and (c) the effect of the administration of justice of a retroactive application of the new standards."

As pointed out in footnote number 24 to the decision, the holding of the *Katz* case was prospective as to all electronic eavesdropping except for that which involved Mr. Katz.

The prospective application of the rule in *Desist v. United States* was applied to uphold a state court conviction in *Kaiser v. New York*, 37 Law Week 4236, docket number 62, decided the same day.

Linkletter v. Walker, 381 U.S. 618, 14 L. ed. 2d 601, 85 S. Ct. 1731, involved a prisoner who was convicted of burglary on the basis of evidence under circumstances which would violate the rule set out in *Mapp v. Ohio*, 367 U.S. 643, but which was obtained prior to that decision and within the rule laid down by *Wolf v. Colorado*, 338 U.S. 25, which the *Mapp* decision overruled. The Court held that the *Mapp* case was prospective only in the overruling and that the prisoner's conviction would not be overturned. Mr. Justice Clark, in the opinion of the Court, cited *Chicot County Drainage District v. Baxter State Bank*, 308 U.S. 371, 84 L. ed. 329, 60 S. Ct. 317: "that the effect of the subsequent ruling on invalidity on prior final judgments when collaterally attacked is subject to no set 'principal of absolute retroactive invalidity' but depends upon a consideration of 'particular relations . . . and particular conduct . . . of rights claimed to have become vested, of status, of prior determinations deemed to have finality'; and 'of public policy in the light of the nature of both the statute and of its previous application'."

The Court further declared: "Thus the accepted rule today is that in appropriate cases the Court may in the interest of justice make the rule prospective." The Court continued with discussion of the circumstances under which a decision should be given prospective effect only; one of the major considerations was that a retroactive decision would not correct the abuses that had occurred while the rule of *Wolf v. Colorado* was in force.

"Nor can we accept the contention of petitioner that the *Mapp* rule should date from the date of the seizure there, rather than that of the judgment of this Court. The date of the seizure in *Mapp* has no legal significance. It was the

judgment of this Court that changed the rule and the date of that opinion is the crucial date. In the light of the cases of this Court this is the better cutoff time."

Chicot County Drainage District v. Baxter State Bank, 308 U.S. 371, 84 L. ed. 329, 60 S. Ct. 317, held that a bondholder of a bankrupt drainage district was bound by a proceeding in bankruptcy of which he had notice even though, subsequent to the proceeding, the statute under which the bankruptcy proceeding was held was declared unconstitutional. As part of the bankruptcy proceeding a plan of readjustment of the district's indebtedness was adopted under which the Reconstruction Finance Corporation bought certain bonds upon their issuance by the district with the approval of the court and also bought certain previously issued bonds of the district from the holders.

In *Great Northern Railway Co. v. Sunburst Oil & Refining Co.*, 287 U.S. 358, 364, 77 L. ed. 360, 366, 553 S. Ct. 145, 85 A.L.R. 254, Mr. Justice Cardozo declared:

> "This is a case where a court has refused to make its ruling retroactive, and the novel stand is taken that the Constitution of the United States is infringed by the refusal.
>
> "We think the Federal Constitution has no voice upon the subject. A state in defining the limits of adherence to precedent may make a choice for itself between the principal of forward operation and that of relation backward."

Nature of Requested Prospective Application

At present there is no sufficient guide for judicial decision by courts in the fourteen states mentioned above to deter-

mine whether, and to what extent, a decision by this Court reversing the trial court would have prospective or retroactive effect. Yet decisions on this very question would probably be necessary in each of those states before its political sub-divisions could issue any more bonds required by state law to be approved by vote of the electors who meet taxpayer or property-ownership requirements. Without an authoritative declaration by this Court, the supreme courts of the states involved may well come up with a number of different and conflicting views as to whether the decision of this Court is prospective and, if so, whether it will apply to (a) elections already held when some but not all bonds have been issued, (b) elections already held when no bonds have been issued, (c) elections which have been called but not yet held, or (d) elections which will be held before the state legislature can amend the pertinent laws or the states can amend their pertinent constitutional provisions. As to elections held, but where bonds have not been issued, construction contracts may or may not have been let in anticipation of the proceeds of the bonds, and the bonds themselves may have been sold to dealers who may have resold them to investors, subject to final delivery when the bonds are printed and executed.

The following appears in footnotes 1 and 2 to the dissenting opinion of Mr. Justice Fortas in *Desist v. United States*, 37 Law Week 4234:

> "*Linkletter* held that the Court's decision in *Mapp v. Ohio*, 367 U.S. 643 (1961), that illegally seized evidence was not admissible in state prosecutions, should not be applied 'retroactively.' In *Tehan v. Shott*, 382 U.S. 406 (1966), the Court held that its decision in *Griffin v. Cali-*

fornia, 380 U.S. 609 (1965), that it violates the privilege against self-incrimination for the prosecution or the trial judge to comment on a criminal defendant's failure to testify in his defense, should not apply 'retroactively.' *Johnson v. New Jersey*, 384 U.S. 719 (1966), held that *Escobedo v. Illinois*, 378 U.S. 478 (1964), and *Miranda v. Arizona*, 384 U.S. 436 (1966) should not apply 'retroactively.' *Stovall v. Denno*, 388 U.S. 293 (1967), held that *United States v. Wade*, 388 U.S. 218 (1967), and *Gilbert v. California*, 388 U.S. 263 (1967), both of which related to the right to counsel at a pretrial lineup, should not be applied 'retroactively.' In *DeStefano v. Woods*, 392 U.S. 631 (1968), the Court held that the right to trial by jury in state criminal prosecutions that had been established in *Duncan v. Louisiana*, 391 U.S. 145 (1968), and *Bloom v. Illinois*, 391 U.S. 194 (1968), was not 'retroactive.' Finally, the Court held in *Fuller v. Alaska*, 393 U.S. 80 (1968), that *Lee v. Florida*, 392 U.S. 378 (1968) was not 'retroactive.' Lee ruled that evidence obtained in violation of §605 of the Federal Communications Act of 1934, 48 Stat. 1103, 47 U.S.C. §605, was inadmissible in state criminal prosecutions.

"The meaning of 'prospectivity' or 'non-retroactivity' has varied in the Court's decisions. In *Linkletter v. Walker, supra*, n. 1, and *Tehan v. Shott, supra*, no. 1, *Mapp* and *Griffin* were said not to apply to convictions that had become final prior to the announcement of those decisions. But *Mapp* and *Griffin* were applied to cases pending on direct review at the time of those decisions. *Johnson v. New Jersey, supra*, n. 1, by contrast, held *Miranda* and *Escobedo* applicable only to trials begun after Miranda and Escobedo were announced. *Stovall v. Denno, supra*, n. 1, held that the *Wade* and *Gilbert* decisions should apply only to cases in which the illegal official conduct took place after the date of decision. *DeStefano v. Woods, supra*, no. 2, held that *Duncan* and

Bloom should apply only to cases where the trial commenced after the date of decision, a date which, since these cases involved the right to jury trial, was apt to coincide with the date of the official conduct. *Fuller v. Alaska, supra*, n. 1, held that *Lee v. Florida, supra*, no. 1, would apply only in cases in which the illegally-obtained evidence was introduced after the date of decision. In all of these cases, the new rule was applied also in the case in which it was announced."

An excellent article by Chief Justice Schaefer of the Illinois Supreme Court entitled "The Control of 'Sunbursts': Techniques of Prospective Overruling" in 42 N.Y.U.L. Rev. 631 (1967) gives an illuminating discussion of the various aspects of applying a judicially announced change in the rules which, in the past, had been obeyed as law.

In this article Justice Schaefer discusses the *Linkletter* case as well as two other recent decisions of the Supreme Court of the United States which decided that rules enunciated in previous cases involving the rights of persons tried for crimes had prospective effect only. The author suggests that the determination of whether a newly announced rule should be given prospective or retroactive effect should be made promptly, pointing out that until this determination is made "other courts will have to act, often irrevocably, upon their guesses as to the ultimate answer. If reargument on the question of prospectivity is desired, reargument can be had—but before the decision comes down."

In concluding his article Justice Schaefer says:

"But prospective overruling is still a rather novel technique and the manner of its use by the Supreme Court in these three cases may influence the directions

of its future growth. Sound growth can be promoted and erratic results avoided by focusing attention on the element of reliance that justifies the technique. Even when that is done there will not always be agreement as to the quality or degree of reliance that justifies a particular prospective limitation. But the area of disaffection will be narrowed if time before and time after are measured from the moment of reliance."

It is submitted that in the type of case here involved several elements of reliance on previously accepted notions of equality should be considered:

First is the reliance of the state in adopting its constitutional or statutory provisions which require that only taxpayers may vote in bond elections. Disappointment in such reliance can result in preventing the issuance of future bonds by political sub-divisions in those states until either amendments to the pertinent constitutional or statutory provisions are adopted or the state supreme court determines under what circumstances bonds can lawfully be issued under state law.

Second is the reliance of the governing bodies of political sub-divisions, in calling, giving notice of, and holding bond elections and in determining the class of voters to whom to submit the propositions. Disappointment in such reliance can render each step of said procedure void.

Third is the reliance of the voters in believing that all bonds voted could be issued in order to pay for a complete project. Disappointment in such reliance, where some bonds of a total voted authorization have been issued and others have yet to be issued, can result in the voters incurring an obligation for a project which may never be completed.

Fourth is the reliance of the bondholders in accepting bonds voted and issued under state law. Disappointment in such reliance can render the bonds void and uncollectible.

In *State v. Martin*, 62 Wash. 2d 645, 384 P.2d 833, decided August 7, 1963, the Supreme Court of Washington reached the conclusion that it should overrule an earlier case decided by that court (*Gruen v. State Tax Commission*, 35 Wash. 2d 1, 211 P.2d 651) in so far as the earlier case purported to "hold that the issuance and sale of limited obligation bonds funded by excise taxes on the sales and handling of cigarettes did not contravene Article 8, Sections 1 and 3, of the State Constitution, and as to all future enactments cognizable under the debt limitation ruling of that case, we declare it is no longer the law." The Court pointed out that it had indicated it might overrule the *Gruen* case in *Washington Toll Bridge Authority v. Yelle*, 161 Wash. Dec. 26, 377 P. 2d 466, decided December 13, 1962, and also mentioned that bonds had been authorized at the 1961 and 1963 sessions of the Legislature, as well as at prior sessions, without a state-wide election, and that some but not all of the bonds authorized at the 1961 session had been issued. Contracts had been let to spend some of the money which would be derived from the sale of some of the bonds of the 1961 authorization theretofore unissued.

The Court then discussed at some length the reasons and authority for making its decision prospective only.

At 384, P. 2d 845, the Court declared:

> "If rights have vested under a faulty rule, or a constitution misinterpreted, or a statute misconstrued or

> where, as here, subsequent events demonstrate a ruling to be in error, prospective overruling becomes a logical and integral part of stare decisis by enabling the courts to right a wrong without doing more injustice than is sought to be corrected. By means of this doctrine, courts of the most prudent and careful tradition can move boldly to right the very wrong they have traditionally been perpetuating under the old, rigidly applied, single minded view of the doctrine of stare decisis. The courts can act to do that which ought to be done, free from the fear that the law itself is being undone."

The Washington Supreme Court held that the bonds of the State of Washington which had been issued in reliance upon the overruled decision and the bonds to be issued under the laws adopted in 1961 would be valid and should be issued in accordance with the terms of the statutes authorizing them; but certain bonds payable from the same source authorized by the 1963 session of the Legislature would put the state in debt beyond its constitutional debt limit, and should therefore be issued only if carried by vote of the people.

CONCLUSION

The decision of the trial court should be upheld. If reversed, however, the Court should declare whether the rule requiring such reversal applies to revenue bonds alone or to bonds payable from ad valorem taxes, in whole or in part, and should further declare that such rule will be applied only to elections called after the date of the decision and that bond elections held or called prior to such date will not be affected thereby.

Respectfully submitted,

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CERTIFICATE

I, the undersigned counsel for petitioner, Louisiana Municipal Association, do hereby certify that a copy of the foregoing brief has been served on all counsel in this matter by depositing a copy thereof in the United States Mail, postage prepaid, addressed to each of them at his respective address of record.

Baton Rouge, Louisiana, this ___ day of _____, 1969.

_____

John V. Parker

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 705

JOSEPH Q. CIPRIANO,

Appellant,

versus

CITY OF HOUMA,
G. LESLIE BROUSSARD, Mayor,
CHRISTIAN L. OLIVIER, CHARLES DAVIDSON,
PETER BOURGEOIS, JR., SAMUEL LUSCO and
WILBERT P. BONVILLAIN,

Appellees.

On Appeal from the United States District Court for the Eastern District of Louisiana.

REPLY BRIEF ON BEHALF OF APPELLANT.

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May It Please the Court:

I.

HARPER V. VIRGINIA STATE BOARD OF ELECTIONS IS CONTROLLING IN THE INSTANT CASE.

The argument set forth in Part I of appellees' brief has been thoroughly controverted and answered in appellant's original brief, and appellant will not burden this Honorable Court with a repetitious argument in answer thereto. Suffice it to say that the case of *Harper v. Virginia State Board of Elections*, 383 U.S. 663, 86 S. Ct.

1079, 16 L.Ed.2d 169 (1966), cited in our original brief, sets forth the correct rule that there must be a reasonable or rational basis for a State to adopt a statutory classification scheme limiting voting rights to a certain class of its citizens, such as property owning taxpayers, whether such election involves the election of officials for general governmental purposes or involves a local administrative election.

II.

THE SUPREME COURT IS NOT REQUIRED TO GIVE ABSOLUTE PROSPECTIVE OR RETROSPECTIVE EFFECT TO A DECISION.

Appellees, who agree with appellant that the decision of this Court in *Linkletter v. Walker*, 381 U.S. 618, 85 S.Ct. 1731, 14 L.Ed. 60 (1965) is applicable in the instant case, clearly read a meaning and a system of categorization based upon a narrow rule of inflexible application into the decision that is not found in the language of the Court or supported by the general approach of the decision.

The question of whether a decision will be applied prospectively, or both prospectively and retrospectively, depends, under the holding in *Linkletter*, even in questions of constitutionality, on the facts and merits of each particular case. As was stated by Mr. Justice Clark in *Linkletter*, 381 U.S. 618, at 629:

> "Once the premise is accepted that we are neither required to apply, nor prohibited from applying, a decision retrospectively; we must then weigh the merits and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation."

In *Linkletter v. Walker, supra*, this Court refused to apply the decision in *Mapp v. Ohio*, 367 U.S. 643, 81 S.Ct.

1684, 6 L.Ed.2d 1081 (1961), retrospectively to a criminal conviction that had become final before the *Mapp* decision was rendered. In the present case, the right of the appellant to seek a remedy before the courts had not expired at the time the appellant filed suit.[1] The bonds that were to be issued have not been sold. This case therefore stands in a position analogous to the position in which the *Mapp* case stood at the time it was presented to this Court. The remedies of the appellant, as in the case of the person convicted in Mapp, are not exhausted. There is no finality in the issuance of the bonds of the City of Houma, just as there was no finality in the criminal proceedings in Mapp. In the *Linkletter* case, the conviction had become final, and all remedies had been exhausted. This case would be similar or analogous to the *Linkletter* case only if the appellant had permitted the statutory period for attacking the bond election to expire without taking action.

Should this Court decide in favor of the appellant, Mr. Cipriano, the question of whether or not its decision would apply to bond elections retrospectively, or merely prospectively, would, it would appear, rest in the discretion of the Court. Counsel for appellant have no desire to infringe upon the Court's prerogatives. However, the issue of retrospective effect has, by force of the nature of the present case, been presented before the Court. Under the holding in the *Linkletter* case, the rational solution to the problem presented would be, should the Court decide in appellant's favor, to apply the decision retrospectively, if you will, in all cases in which the issuance of bonds has not become final, or the rights of the issuing governmental body or agency, and of the bondholder, have not become

[1] Under the applicable provisions of Louisiana law, the appellant was given sixty days from the date of promulgation of the result of the bond election within which to contest the legality of the election. Louisiana R.S. 33:4260. The appellant, Mr. Cipriano, filed suit within this time.

vested, and to refuse relief in all cases in which the matter has become final or rights have become vested. As the *Linkletter* decision indicates, retrospective effect rests largely upon the merits of each particular case. It is impossible at the present time to foresee all possible situations that might arise, or to suggest an application of the Linkletter approach in more explicit detail. It is sufficient to say that, in appellant's view, a decision favorable to appellant in this case should apply in all cases in which rights have not become vested and the proceedings have not become final.[2] And appellant should point out that appellant is not requesting for himself, as a person contesting a bond election, greater rights or remedies than future litigants would have, as in the present case no rights have become vested and the proceedings have not become final.

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[2] The obvious dire consequences which may ensue from a retrospective application of the Reapportionment Cases is sufficient reason under the *Linkletter* rule that a pure prospective effect be given to those decisions. Unlike those cases, there are no dire consequences nor any impairment of vested rights which can result from a decision of the Court granting appellant the relief he seeks, and giving such a decision, in accordance with the *Linkletter* rule, the effect suggested by appellant. *Allen v. State Board of Elections*, Nos. 3, 25, 26 and 36 — October Term, 1968; 89 Ct. 817 (1969), cited by appellees, while not inconsistent with the rationale of *Linkletter v. Walker*, 381 U.S. 618, 85 S.Ct. 1731, 14 L.Ed. 2d 601 (1965), is factually inapposite to the instant case.

III.

A STATE LEGISLATURE CANNOT VALIDATE STATE ACTION UNDER A STATE STATUTE WHICH IS VIOLATIVE OF THE UNITED STATES CONSTITUTION.

Appellees in their brief contend that the issuance of the $10 million of revenue utility bonds approved by the property owners of the City of Houma was validated by the following paragraph contained in Act No. 33 of the Extra Session of the Louisiana Legislature of 1968, amending Louisiana R.S. 33:4258:

> "In the event a property taxpayers' election has heretofore been held and promulgated approving the issuance of bonds under this Subpart, as contemplated in subparagraph (2) above, the governing body may proceed with the issuance and sale of such bonds without complying with the provisions of this section and without any further election approval."

No mention is made in the quoted paragraph either of the validation of a contested bond election or of the validation of the issuance of bonds thereunder. All that the paragraph does is provide that the enactment of the amended statute does not interfere with the issuance of bonds voted under the statute as it stood before amendment. If, for example, the amended section were in any respect narrower than the earlier statute or imposed requirements not imposd by the earlier statute, the governing body could proceed with the issuance of bonds that had been voted, notwithstanding the fact that the statute, by implication, imposes a requirement not found in the statute as it stood before amendment, that, before proceeding to the holding of a bond election, the governing body shall "elect(s)" (Louisiana R.S. 9:4258 as amended, paragraph "(2)") "at (its) discretion" (Louisiana R.S. 9:4258 as amended,

introductory paragraph) whether the bond issue shall be submitted to all qualified electors or to property taxpayers. The entire paragraph quoted above appears to have been placed in the amended statute as a safeguard, from the standpoint of draftsmanship, to prevent an attack on a bond election held under the former statute from being made under the contention that the enactment, in itself, of the amended section, or the substantial effect of the amended statute, rendered all bond elections held under the former statute invalid. The quoted paragraph contains nothing that would indicate that it would validate a contested bond election.

If any part of the amended statute would have the effect of validating the bond election contested in this case, it would be the paragraph that follows the paragraph originally quoted:

> "All bonds heretofore issued under the provisions of this Subpart are hereby validated, ratified and confirmed and declared to be valid and binding obligations of the municipal corporation in accordance with the terms of their issuance in spite of any one or more irregularities which may have occurred in the passage of this Subpart or question which might be raised as to the constitutionality of any procedural provision of this Subpart. All proceedings heretofore had in connection with the issuance of such bonds are hereby ratified, validated and confirmed."

The quoted paragraph purports to validate all bonds heretofore issued, and all proceedings in the connection with the issuance of "such bonds". However, in the case presented before this Court, the utility revenue bonds of the City of Houma have not been issued (appellees' brief, p. 14). Therefore, although the paragraph of the amended statute last quoted in certain cases has, or purports to have,

the effect of validation (unlike the paragraph first quoted), it applies only to "bonds heretofore issued" and to proceedings in connection with the issuance of "such bonds" (meaning bonds heretofore issued). The quoted paragraph has no application to bonds that have not been issued. Furthermore, it is extremely doubtful that bond elections can be relegated to the status of ". . . proceedings in connection with the issuance of . . . bonds . . .", or that bond elections were intended to be included within that phrase. It would appear that the quoted phrase would be intended to include only matters of smaller significance.

The amendment of Section 4258 of Title 33 of the Louisiana Revised Statutes of 1950 therefore neither had nor purported to have the effect of validating the bond election called by the governing body of the City of Houma. Assuming, however, for purposes of alternative argument, that the amendment had the effect that appellees contend it had, of purporting to validate bond elections in which rights granted citizens of the United States under the Fourteenth Amendment of the Constitution of the United States were violated, then the amendment is unconstitutional. Appellant contends that the statute was unconstitutional because it limited the right to vote in a bond election to property taxpayers when property ownership did not furnish a rational basis on which to distinguish between the rights of property taxpayers and the general electorate. It is the election involving the denial of rights guaranteed under the Fourteenth Amendment which appellees contend was validated by legislative enactment. To so contend is to attempt to place an enactment of a state legislature on an equal level with the United States Constitution. We do not contend that the states should be denied the rights properly reserved to or accorded to them. But states do not have the power to render constitutional by enactments of their legislatures statutes that are un-

constitutional, or to validate by enactments of their legislatures state actions which in themselves denied constitutional rights and which were undertaken under unconstitutional statutes. The statute challenged by appellant is unconstitutional, and the state action undertaken under the statute was in itself an unconstitutional denial of the rights of the citizens of the United States, and neither the statute nor the action undertaken under it can be validated by legislative decree. To hold otherwise would upset not only the Federal system but also the traditional American constitutional framework of the separation of powers.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Judgment of the Court below should be reversed and that the provisions of the Constitution and statutes of the State of Louisiana which require the ownership of property and the payment of taxes thereon as a condition of voting in revenue bond elections in Louisiana be declared in violation of the Constitution of the United States and particularly the Fourteenth Amendment thereof and therefore null and void.

It is further respectfully submitted that the election held in Houma, Louisiana on October 24, 1967, be declared null and void and without effect and that an injunction issue against all named defendants, or their successors in office, enjoining the said parties from enforcing, administering or giving any effect to the cited provisions of the Constitution and Statutes of Louisiana.

Respectfully submitted,

KENNETH WATKINS,
415 Goode Street,
Houma, Louisiana,
Counsel for Appellant.

CERTIFICATE

I hereby certify that a copy of the foregoing Reply Brief for the Appellant has been served on opposing counsel of record by depositing such in the United States Mail, postage pre-paid, addressed to their addresses of record.

Houma, Louisiana, April ....., 1969.

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KENNETH WATKINS

CIPRIANO *v.* CITY OF HOUMA ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA.

No. 705. Argued April 24, 1969.—Decided June 16, 1969.

Louisiana law provides that only "property taxpayers" have the right to vote in elections called to approve the issuance of revenue bonds by a municipal utility system. At a special election a majority of the property taxpayers approved a bond issue for the City of Houma's municipally owned utility systems. Within the period permitted to contest the election result appellant, a nonproperty taxpayer otherwise qualified to vote, brought suit for himself and others similarly situated to enjoin the issuance of the bonds and to obtain a declaratory judgment that the limitation of the franchise to property taxpayers is unconstitutional. A three-judge District Court held the limitation constitutional. *Held:*

1. The "property taxpayer" limitation on the franchise violates the Equal Protection Clause of the Fourteenth Amendment. *Kramer* v. *Union Free School District No. 15*, *ante*, p. 621.

(a) Where the State grants the right to vote in a limited purpose election to some qualified voters and denies it to others, "the Court must determine whether the exclusions are necessary to promote a compelling state interest." *Kramer*, *supra*, at 627.

(b) Here the benefits and burdens of the bond issue fall indiscriminately on property owner and nonproperty owner alike, and the classification thus unconstitutionally excludes otherwise qualified voters who are as substantially affected and directly interested in the matter voted on as those who are permitted to vote.

2. This decision will have prospective effect, and will apply only where the time for challenging the election result has not expired, or in cases brought within the time specified for challenging the election and which are not yet final.

286 F. Supp. 823, reversed and remanded.

Kenneth Watkins argued the cause and filed briefs for appellant.

Eugene E. Huppenbauer, Jr., argued the cause for appellees. With him on the brief was *Ted J. Borowski.*

Briefs of *amici curiae* were filed by *Jack P. F. Gremillion*, Attorney General, and *John V. Parker* for the State of Louisiana et al., and by *Irving A. Jennings, J. A. Riggins, Jr.*, and *Rex E. Lee* for the Salt River Project Agricultural Improvement & Power District.

PER CURIAM.

In this case we must determine whether provisions of Louisiana law which give only "property taxpayers" the right to vote in elections called to approve the issuance of revenue bonds by a municipal utility are constitutional. This case thus presents an issue similar to the one considered in *Kramer* v. *Union Free School District No. 15, ante,* p. 621. With one judge dissenting, a three-judge District Court determined that the Louisiana provisions were constitutional. However, as in *Kramer*, we find that the challenged provisions violate the Equal Protection Clause of the Fourteenth Amendment; we therefore reverse.

The Louisiana Constitution provides that the legislature may authorize municipalities to issue bonds "[f]or the purpose of constructing, acquiring, extending or improving any revenue-producing public utility." La. Const., Art. 14, § 14 (m). Pursuant to this provision, the legislature enacted legislation authorizing Louisiana municipalities to issue revenue bonds. La. Rev. Stat. § 33:4251 (1950).[1] The legislature further provided, however, that the municipalities could issue the bonds

[1] The amount of debt a municipality may incur is limited by the Louisiana Constitution. La. Const., Art. 14, § 14 (f). These revenue bonds are not included in computing the municipal debt, however, if they are secured exclusively by a mortgage on the assets of the utility system and a pledge of the system revenues. La. Const., Art. 14, § 14 (m).

only if they were approved by a "majority in number and amount of the property taxpayers qualified to vote . . . [who vote at the bond election]."[2] La. Rev. Stat. § 39:501 (1950). See also La. Rev. Stat. §§ 33:4258, 39:508 (1950).

Appellee City of Houma owns and operates gas, water, and electric utility systems. In September 1967 the city officials scheduled a special election to obtain voter approval for the issuance of $10,000,000 of utility revenue bonds. The city planned to finance extension and improvement of the municipally owned utility systems with the bond proceeds. At the special election a majority "in number and amount" of the property taxpayers approved the bond issue. However, within the period provided by Louisiana law for contesting the result of the election, La. Rev. Stat. § 33:4260 (1950), this suit was instituted in the United States District Court for the Eastern District of Louisiana.

Appellant alleged that he was a duly qualified voter[3] of the City of Houma, and that he had been prevented from voting in the revenue bond election solely because he was not a property owner. He sued for himself and for a class of 6,926 nonproperty taxpayers otherwise qualified as City of Houma voters. Appellant sought to enjoin the issuance of the bonds approved at the special election and to obtain a declaratory judgment that the limitation of the franchise to property taxpayers is unconstitutional. A three-judge District Court was convened pursuant to 28 U. S. C. §§ 2281, 2284. The

[2] We were informed at oral argument that "number and amount" means the bonds must be approved by a majority of the property taxpayers voting and their votes must also represent a "majority of the assessed property owned by those taxpayers who are actually voting."

[3] The qualifications are of age, residence, and registration. See La. Rev. Stat. § 39:508 (1950).

court then dismissed the suit, finding the Louisiana provisions constitutional. *Cipriano* v. *City of Houma*, 286 F. Supp. 823 (D. C. E. D. La. 1968). Appellant brought a direct appeal to this Court, 28 U. S. C. § 1253; we noted probable jurisdiction. 393 U. S. 1061 (1969).

As we noted in *Kramer, supra,* if a challenged state statute grants the right to vote in a limited purpose election to some otherwise qualified voters and denies it to others,[4] "the Court must determine whether the exclusions are necessary to promote a compelling state interest." *Kramer* v. *Union Free School District No. 15, supra,* at 627. Moreover, no less showing that the exclusions are necessary to promote a compelling state interest is required merely because "the questions scheduled for the election need not have been submitted to the voters." *Id.*, at 629, n. 11.

The appellees maintain that property owners have a "special pecuniary interest" in the election, because the efficiency of the utility system directly affects "property and property values" and thus "the basic security of their investment in [their] property [is] at stake." Assuming, *arguendo*,[5] that a State might, in some circumstances, constitutionally limit the franchise to qualified voters who are also "specially interested" in the election, whether the statute allegedly so limiting the franchise denies equal protection of the laws to those otherwise qualified voters who are excluded depends on "whether all those excluded are in fact substantially less interested or affected than those the statute includes." *Id.*, at 632.

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[4] Appellant does not challenge any other voter qualification regulations. The sole issue in this case is the constitutionality of the provisions of Louisiana law permitting only property taxpayers to vote in utility bond elections.

[5] As in *Kramer* v. *Union Free School District No. 15, supra,* we find it unnecessary to decide whether a State might, in some circumstances, limit the franchise to those "primarily interested."

At the time of the election, only about 40% of the city's registered voters were property taxpayers. Of course, the operation of the utility systems—gas, water, and electric—affects virtually every resident of the city, nonproperty owners as well as property owners. All users pay utility bills, and the rates may be affected substantially by the amount of revenue bonds outstanding.[6] Certainly property owners are not alone in feeling the impact of bad utility service or high rates, or in reaping the benefits of good service and low rates.

The revenue bonds are to be paid only from the operations of the utilities; they are not financed in any way by property tax revenue. Property owners, like nonproperty owners, use the utilities and pay the rates; however, the impact of the revenue bond issue on them is unconnected to their status as property taxpayers. Indeed, the benefits and burdens of the bond issue fall indiscriminately on property owner and nonproperty owner alike.

Moreover, the profits of the utility systems' operations are paid into the general fund of the city and are used to finance city services that otherwise would be supported by taxes. Of course, property taxpayers may be concerned with expanding and improving the city's utility operations; such improvements could produce revenues which eventually would reduce the burden on the property tax to support city services. On the other hand, nonproperty taxpayers may feel that their interests as rate payers indicate that no further expansion of utility debt obligations should be made. Of course, these differences of opinion cannot justify excluding either group from the bond election, when, as in this case, both are substantially affected by the utility opera-

[6] For example, a proposed decrease in utility rates may be forestalled by the issuance of new revenue bonds.

tions. For, as we noted in *Carrington* v. *Rash*, 380 U. S. 89, 94 (1965), "'[f]encing out' from the franchise a sector of the population because of the way they may vote is constitutionally impermissible."

The challenged statute contains a classification which excludes otherwise qualified voters who are as substantially affected and directly interested in the matter voted upon as are those who are permitted to vote. When, as in this case, the State's sole justification for the statute is that the classification provides a "rational basis" for limiting the franchise to those voters with a "special interest," the statute clearly does not meet the "exacting standard of precision we require of statutes which selectively distribute the franchise." *Kramer* v. *Union Free School District No. 15*, *supra*, at 632. We therefore reverse the judgment of the District Court.

Significant hardships would be imposed on cities, bondholders, and others connected with municipal utilities if our decision today were given full retroactive effect. Where a decision of this Court could produce substantial inequitable results if applied retroactively, there is ample basis in our cases for avoiding the "injustice or hardship" by a holding of nonretroactivity. *Great Northern R. Co.* v. *Sunburst Oil & Refining Co.*, 287 U. S. 358, 364 (1932). See *Chicot County Drainage Dist.* v. *Baxter State Bank*, 308 U. S. 371 (1940). Cf. *Linkletter* v. *Walker*, 381 U. S. 618 (1965). Therefore, we will apply our decision in this case prospectively. That is, we will apply it only where, under state law, the time for challenging the election result has not expired, or in cases brought within the time specified by state law for challenging the election and which are not yet final. Thus, the decision will not apply where the authorization to issue the securities is legally complete on the date of this decision. Of course, our decision will not affect the validity of securities which have been sold or issued prior to this decision and pursuant to such final authorization.

The judgment of the District Court is reversed. The case is remanded for further proceedings consistent with this opinion.

It is so ordered.

MR. JUSTICE BLACK and MR. JUSTICE STEWART concur in the judgment of the Court. Unlike *Kramer* v. *Union Free School District No. 15, ante,* p. 621, this case involves a voting classification "wholly irrelevant to achievement" of the State's objective. *Kotch* v. *Board of River Port Pilot Comm'rs,* 330 U. S. 552, 556.

MR. JUSTICE HARLAN, while adhering to his views expressed in dissent in *Reynolds* v. *Sims,* 377 U. S. 533, 589 (1964); *Harper* v. *Virginia Board of Elections,* 383 U. S. 663, 680 (1966); and *Avery* v. *Midland County,* 390 U. S. 474, 486 (1968), but considering himself bound by the Court's decisions in those cases, concurs in the result.